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ATTACHMENT IN SUPPORT OF GROUNDS 3.

GROUND 3 - VIOLATIONS OF U.S. CONST. 5TH, AND 14TH AMENDMENTS DUE PROCESS AND  
EQUAL PROTECTION CLAUSES FOR PROSECUTIONS FAILURE TO DISCLOSE MATERIAL  
EXCULPATORY EVIDENCE TO DEFENSE<sup>CONTENTIONS-</sup>, AND SUPPRESSION, LOSS AND DESTRUCTION OF  
FAVORABLE EVIDENCE, AND DEPORTATION OF MATERIAL WITNESSES TO FACTS FAVORABLE  
TO DEFENSE. STATEMENT OF FACTS. SEE EXHIBIT B, PAGE 1, R.T. EXCERPT 177, LINES  
1-7, 11-16: THE COURT: ALL RIGHT, ANY RESPONSE BY THE PEOPLE? MS. HANNAH: --  
CIRCUMSTANCES AND THE RESULT OF THE INCIDENT THAT OCCURED ON MARCH 19TH  
(04) OF LAST YEAR. WHETHER THE ISSUE -- THE WHOLE QUESTION OF THE TRIAL IS  
WHETHER MR. BURTON IS THE PERSON THAT COMMITTED THE (ALLEGED) CRIME,  
NOT WHETHER OR NOT MR. THOMAS IS, IN FACT, A VICTIM OF A (ALLEGED) CRIME.  
MS. HANNAH: I THINK THE QUESTION IS WHETHER OR NOT MR. BURTON IS THE PERSON  
THAT COMMITTED THE (ALLEGED) CRIME. BUT THE PEOPLE CAN CERTAINLY REFER TO MR. THOMAS  
AS MR. THOMAS. THE COURT: ALL RIGHT. SEE EXHIBIT B, PAGE 2, R.T. EXCERPT 719, LINES  
1-7, 21-23. THE COURT: ALL RIGHT, LET'S GO BACK IN THE HALLWAY FOR A MOMENT, (THE  
COURT, BOTH COUNSEL, AND THE COURT REPORTER EXIT THE COURTROOM.) THE FOLLOWING  
PROCEEDINGS WERE HEARD AT SIDE BAR) MR. ADAIR: I HAVE CONCERNS UNDER 352.  
MR. TROCHA: -- WE HAVE EVIDENCE THAT THE DEFENSE HAS BROUGHT OUT, AND IS  
GOING TO BRING OUT FURTHER IN THEIR CASE IN CHIEF, THAT MR. THOMAS IS, IN  
FACT, THE AGGRESSOR. NOW SEE EXHIBIT "B", PAGE 3, R.T. EXCERPT 720, LINES 26 AND 27.  
THE COURT: SO IF THE DEFENDANT WERE TO TESTIFY HE DIDNT SHOOT ANYONE, NOW SEE  
EXHIBIT "B" PAGE 57, R.T. EXCERPT 1071, LINES 1-4021; EL CAJON, CALIFORNIA, WEDNESDAY 7/27/05,  
1:34 P.M. (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE  
OF THE JURY) THE COURT: LET'S GO ON THE RECORD. COUNSEL AND DEFENDANT ARE PRESENT.  
"THE JURY IS NOT." MR. TROCHA: RIGHT. THE COURT: ALL RIGHT. SO WE'LL DO THAT AFTER  
THEY REST. ON THE JUDICIAL NOTICE, I REVIEWED THE FILE, WOULD IT BE SIMPLY  
ADEQUATE TO NOTE UNDER THE CASE NUMBER THAT ON SUCH AND SUCH A DATE  
AN ORDER FOR INJUNCTION PROHIBITING HARASSMENT WAS ISSUED BY THE COURT  
AGAINST MR. THOMAS PROTECTING MR. BURTON? MR. ADAIR: CORRECT. THE COURT: THAT'S ALL

1 YOU NEED? MR. ADAIR: THAT WOULD BE FINE, YOUR HONOR, THE COURT; ALL RIGHT, I'LL  
2 DO THAT, NOW SEE EXHIBIT "B", PAGE 23, R.T. EXCERPT 389, LINES 4-10, 12, 15-18, 20-23, AND 27.  
3 MR. ADAIR: WELL, WE'VE REQUESTED PHOTOGRAPHS--- I THINK IT STARTED WITH--- WITH  
4 THE PRIOR ATTORNEY ON THE CASE APPROXIMATELY A YEAR AGO REQUESTING  
5 PHOTOGRAPHS, AND THEY-- I'VE RENEWED-- THAT WAS IN THE FORM OF, I THINK,  
6 A LETTER AND AN ACTUAL FILED MOTION THAT WAS NEVER HEARD, [A DISCOVERY MOTION]  
7 THAT WAS LAST YEAR, I FOLLOWED UP WITH A LETTER;--- I FOLLOWED UP WITH  
8 A LETTER REQUESTING PHOTOGRAPHS, AND-- SO I'M JUST SAYING WE JUST DIDN'T  
9 HAVE THE PHOTOGRAPHS, AND THE PHOTOGRAPH SHOWS EXACTLY WHERE THE CAR WAS,  
10 --- SUPPRESSION MOTION--- CONCERNING THE SUPPRESSION MOTION. THE COURT: MR.  
11 TROCHA, (PROSECUTION'S REBUTTAL ON RECORD) DO YOU HAVE ANYTHING TO SAY IN RESPONSE?  
12 MR. TROCHA: [I DON'T KNOW THE HISTORY OF THE PHOTOGRAPHS OR ANYTHING.] THE  
13 COURT: OKAY, NOW SEE EXHIBIT "B", PAGE 24, R.T. EXCERPT 0023 (MR. PLUMMER'S INFORMAL REQUEST  
14 FOR DISCOVERY) NOW SEE EXHIBIT "B" PAGES 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, R.T. EXCERPTS 0011, 0013,  
15 0013, 0014, 0015, 0016, 0017, 0018, 0019, 0020, 0021, 0022, LINES 1-28 ON ALL EXCERPT PAGES LISTED,  
16 (MR. PLUMMER'S DEFENSE MOTION <sup>FOR DISCOVERY</sup> FILED JULY 30, 2004, SERVED ON PROSECUTION) SEE NOW EXHIBIT "B",  
17 PAGES 27, AND 28, LINES 1-28 ON BOTH PAGES. (ORDER DENYING MOTION FOR DISCOVERY PURSUANT TO  
18 PENAL CODE § 1054.9) (PETITIONER'S UNSUCCESSFUL POST TRIAL MOTION FOR DISCOVERY), SEE EXHIBIT "B"  
19 PAGE 55, R.T. EXCERPT 1069, LINES 2-6, 15, 16, 19, 25, 26-28. THE COURT WELL, I'M NOT  
20 EVEN SURE HOW WE WOULD KNOW THAT IT'S HIS BACKPACK. (MEANING THE DEFENDANT)  
21 WE DON'T HAVE TESTIMONY AS TO WHOSE IT IS OR ANYTHING, SO I THINK IT WOULD BE  
22 DIFFICULT - STATEMENT OF CASE: AN ALLEGED BACKPACK WAS RECOVERED ALLEGEDLY  
23 FROM THE TOP OF DEFENDANT'S VEHICLE PARKED ON THE CURTILAGE OF HIS HOME. FALSE EVIDENCE  
24 OF A NOTEBOOK WITH STATEMENTS ALLEGEDLY WRITTEN BY PETITIONER, DEFAMING HIS  
25 CHARACTER, AND PREJUDICIALLY USED AS EVIDENCE IN PUBLIC RECORD AGAINST DEFENDANT.  
26 SEE EXHIBIT "D" PAGE 80, R.T. EXCERPT 55, LINES 11-28, EXHIBIT "D" PAGE 81, R.T. EXCERPT 56, LINE 1-14 -  
27 (TESTIMONY OF AGENT KIRK AT 1538.5 SUPPRESSION HEARING.) Q. WAS THERE ALSO A BACKPACK  
28 THERE AT THE SCENE? (DEFENDANT'S RESIDENCE AT 425 E. MAIN ST. E.C. CA. 92020 19 MARCH 04 UPON HIS ARREST).

MR. EDWARD BURTON #FD 2238 IN PRO PER  
P.O. BOX 5246 - CSATF/SPC 119  
COR CORANICA, 93212

REQUEST FOR THE STAY IS DENIED, THE MOTION WAS RULED UPON FEBRUARY 24TH -- ALSO MR. BURTON WILL NOT BE DEPRIVED OF HIS APPELLATE RIGHTS,

SHOULD THE CASE PROCEED ADVERSELY TO HIM AND HE WISHES TO APPEAL ON THESE ISSUES, HE WILL CERTAINLY BE ABLE. <sup>STATEMENT OF FACTS</sup> SEE EXHIBIT D, PAGE 19, RT. 164, LINES 19-22,

24-28, SEE ALSO EXHIBIT A, PAGE 20, RTEKCEPT 165, LINES 4-9, 13-19, SEE ALSO EXHIBIT D, PAGE 21, RTEKCEPT 166, LINES 8-10. THE COURT: OKAY; ALL RIGHT.

THEN I THINK THAT COVERS THE PEOPLE'S MOTIONS FOR THE MOMENT, AND LET'S TURN TO THE DEFENSE MOTIONS. AND LOOKING FIRST AT THE MOTION TO SUPPRESS DEFENDANT'S (ALLEGED ADMISSIONS OR - THE AUDIO INTERVIEW, AND AS I UNDERSTAND IT, AT THIS POINT, THE PEOPLE ARE NOT PLANNING TO PRESENT THOSE (ALLEGED) STATEMENTS IN THEIR CASE - IN-CHIEF, IS THAT CORRECT?

MS. HANNAH: IT IS. THE COURT: ALL RIGHT. THE COURT: ALL RIGHT IN LIGHT OF THAT, I DON'T THINK I NEED TO RULE ON THE MOTION, DO YOU AGREE, MR. ADAIR? I BELIEVE THAT'S CORRECT, YOUR HONOR. THE COURT: ALL RIGHT. DO YOU ANTICIPATE ANY MOTION OR -- I DON'T SEE ANYTHING IN HERE THAT WOULD GO TO BARRING PEOPLE'S -- SUCH AS VOLUNTARINESS, WHICH I -- MR. ADAIR, I BELIEVE MY CLIENT WOULD BRING A FURTHER ISSUE CONCERNING VOLUNTARINESS -- HIS POSITION IS THAT HE WAS, IN ESSENCE, TORTURED. THAT HE WAS PUT IN A PAPER SUIT, THAT HE WAS BAREFOOT, THAT HE WAS REFUSED THE RIGHT TO CALL AN ATTORNEY, AND THAT THERE WERE OTHER INFLECTIONS OF DISCOMFORT AND DISTRESS -- THE COURT: ALL RIGHT, THE COURT:

"VOLUNTARY" HAS A LAY MEANING THAT MIGHT BE VIEWED A LITTLE DIFFERENTLY BY MR. BURTON BECAUSE OBVIOUSLY HE WAS IN CUSTODY AND PROBABLY DIDN'T FEEL HE WAS FREE TO LEAVE, SEE NOW EXHIBIT A, PAGE III RTEKCEPT 14, LINES 14-18, 21-26. THE COURT: MR. BURTON, IS THERE ANYTHING FURTHER YOU WISH TO SAY? THE DEFENDANT: YES, SIR YOUR HONOR, -- THAT THERE ALSO WAS INFRINGEMENT UPON MY 14TH AMENDMENT RIGHTS TO DUE PROCESS, AND ALSO MY DAUGHTER WHO -- ORDERS, AND SHE DID NOT RECEIVE EQUAL --

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1 PROTECTION UNDER THE LAW AND I FEEL I DIDN'T EITHER BECAUSE WHEN IT  
2 CAME UP CONCERNING THE RESTRAINING ORDER -- ONCE RESTRAINING ORDERS --  
3 FROM THE INFORMATION I GATHERED, WHETHER THEY HAVE BEEN SERVED  
4 OR NOT, THEY'RE SUPPOSED TO BE MAINTAINED BY LAW ENFORCEMENT OFFICERS.  
5 SEE EXHIBIT "A", PAGE 97, LINES 6-7, 17-19. THE COURT: -- AND YOU'VE BEEN THROWING  
6 AROUND THE MAJORITY OF THE AMENDMENTS IN THE BILL OF RIGHTS AND  
7 A FEW OTHERS TO BOOT -- IT'S THE ATTORNEY'S JOB TO REPRESENT YOU  
8 AND TO ADVOCATE ~~AND ADVISE~~ YOUR POSITION AND PROTECT YOUR RIGHTS  
9 AND INTERESTS, SEE EXHIBIT "A" PAGE 81, R.T. EXCERPT 797, LINES 1-8. THE COURT:  
10 ALL RIGHT, SO YOU HAVE YOUR FRAMEWORK AS TO WHAT YOU CAN DO, MR. ADAIR,  
11 YES YOUR HONOR, THE COURT: I THINK -- MR. ADAIR: "IT'S FUN BEING A  
12 PROSECUTOR." THE COURT: "[IT DOES PUT YOU IN A DIFFERENT ROLE,"  
13 DOESN'T IT?]" ALL RIGHT, SEE EXHIBIT "D", PAGE 32, R.T. EXCERPTS, LINES 14-  
14 23, SEE ALSO EXHIBIT "D", PAGE 33, R.T. EXCERPT 6, 3-22, SEE ALSO EXHIBIT "D", PAGE 34,  
15 LINES 3-10, 17-21, SEE ALSO EXHIBIT "D", PAGE 35, R.T. EXCERPT 8, <sup>LINES 1, 22, 23</sup> LINE 1, <sup>THE DEFENDANT,</sup>  
16 -- I HAVE NOT AS OF YET (11-05-04) AT THIS POINT, AFTER REQUESTING SEVERAL TIMES  
17 (FROM MR. PLUMMER) TO HAVE RECEIPT OF THE PROPERTY THAT WAS SEIZED  
18 FROM ME, MY LIFE, MY PROPERTY HAVE BEEN SEIZED FROM ME UNLAWFULLY, IT  
19 WAS NOT MENTIONED IN THE FIRST MOTION THAT WAS SUBMITTED THAT PRIOR  
20 TO INTERROGATION THERE WAS ALSO AN ADDITIONAL 4TH AMENDMENT  
21 VIOLATION WHEREAS EVIDENCE WAS TAKEN FROM MY BODY, BELT, PANTS,  
22 SHIRT, SOCKS, SHOES, AND GLASSES WERE REMOVED FROM MY BODY -- TAKEN  
23 AND PLACED WITH OTHER PROPERTY SEIZED -- THAT VIOLATION OF THE 4TH  
24 AMENDMENT SHOULD HAVE BEEN MENTIONED IN THE MOTION BECAUSE IT  
25 WAS DONE WITHOUT WARRANT, AND ALSO THERE WAS A VIOLATION OF  
26 PENAL CODE 147 AS I BELIEVE PRIOR TO INTERROGATION, I WAS  
27 STRIPPED NAKED, PUT INTO A WHITE PAPER SUIT, BARE FOOT AND FREEZING  
28 AND PLACED IN THE ISOLATION CELL FOR APPROXIMATELY ONE HOUR

14

1 PRIOR TO INTERROGATION. THE COURT: YOU WERE UNDER ARREST DURING  
2 ALL OF THAT? THE DEFENDANT: I WAS PLACED IMMEDIATELY UNDER  
3 ARREST, YOUR HONOR, FROM THE POINT OF CONTACT WITH THE POLICE,  
4 THE COURT: GO AHEAD. THE DEFENDANT: THERE WAS STATEMENTS  
5 ENTERED ALSO IN THAT FIRST MOTION THAT WERE FALSE STATEMENTS  
6 THAT I SPECIFICALLY TOLD MY ATTORNEY, MR. PLUMMER, THAT I DID NOT  
7 MAKE. AFTER THE POLICE MADE DIRECT INCRIMINATING STATEMENTS,  
8 "WHERE IS --" OR QUESTION AND DIRECT INCRIMINATING QUESTION, -- I  
9 STUCK TO MY RIGHT TO REMAIN SILENT, I SAID NOTHING. -- BEFORE  
10 INTERROGATION I INVOKED MY 6TH AMENDMENT RIGHT TO COUNSEL  
11 IMMEDIATELY FOLLOWED BY MY 5TH AMENDMENT RIGHT TO REMAIN  
12 SILENT, MR. PLUMMER DID NOT MENTION THAT IN THE MOTION, HE  
13 OMITTED THAT -- AFTER I INVOKE MY 5TH AMENDMENT RIGHT THE  
14 OFFICER INITIATED THE CONVERSATION. I DID NOT, I THEN AGAIN WAS  
15 QUESTIONED, -- A ROLE IN DENYING MY 1ST AMENDMENT RIGHT TO FREEDOM  
16 OF SPEECH AND EXPRESSION IN VIOLATION OF PENAL CODE 85(D). I WAS  
17 DETAINED PAST THREE HOURS, UPON MY IMMEDIATE REQUEST TO SPEAK  
18 TO MY ATTORNEY, I SHOULD HAVE BEEN ALLOWED TO CALL MY ATTORNEY,  
19 -- LIKE A SLAVE, SHACKLED AND BAREFOOT. PHOTOGRAPHS WERE TAKEN:  
20 -- SINCE I AM BASICALLY A LAYMAN IN THIS FIELD, SEE NOW EXHIBIT "A"  
21 PAGE 2, RT. EXCERPT 10, LINES 16-22, 27, 28, SEE EXHIBIT "A", PAGE 3, RT. EXCERPT 11, LINES  
22 1-17, 20-24, 27, 28, THE DEFENDANT: -- FACT IS THAT AFTER NUMEROUS TIMES AFTER  
23 I INDEPENDENTLY DID MY OWN RESEARCH AND HAD LEARNED -- AFTER I IMPLEMENTED  
24 MY 6TH AND MY 5TH AMENDMENT RIGHTS, THAT ONCE THE OFFICER INITIATED  
25 CONVERSATION, THE INTERROGATION WAS SUPPOSED TO STOP. -- I LATER FOUND OUT  
26 THAT A MOTION COULD HAVE BEEN MADE DURING THE PRELIMINARY HEARING TO SET  
27 FORTH THE LITIGATION OF THE VALIDITY OF THESE SEIZURES. SO COUNSEL, IN A  
28 SENSE -- I DON'T WANT TO BE HARSH AND SAY HE LIED TO ME, BUT HE DECEIVED ME

1 AND HE CAME TO VISIT ME AND WE HAD A CONVERSATION AND I ASKED  
2 HIM AGAIN, "IS THERE ANYTHING I CAN DO PRIOR TO TRIAL TO SUPPRESS THIS  
3 EVIDENCE THAT WAS UNLAWFULLY OBTAINED, INCLUDING MY ARREST," BECAUSE  
4 IN THE BEGINNING, AS I SAID, THERE WAS A MIRANDA VIOLATION. I SHOULD  
5 HAVE BEEN MIRANDIZED WHEN THE OFFICER BEGAN ASKING ME THAT  
6 DIRECT INCRIMINATING QUESTION, -- ALSO, HE ENTERED MY APARTMENT  
7 UNLAWFULLY IN VIOLATION OF 4TH AMENDMENT -- ATTORNEY HAD  
8 TOLD ME NUMEROUS TIMES THAT THERE'S NOTHING YOU CAN DO UNTIL TRIAL,  
9 OKAY, SO I'M VERY UPSET AT THE FACT THAT I'VE WORKED INDEPENDENT  
10 -- WORKED INDEPENDENT OF HIM BECAUSE ALSO HE IS NOT GATHERED,  
11 IN SEVEN MONTHS, ANY EXCULPATORY EVIDENCE. I DO NOT HAVE HARD DISCOVERY,  
12 -- I HAVE INEFFECTIVE COUNSEL, AND THE CONSTITUTION OF THE UNITED STATES  
13 OF THE 6TH AMENDMENT GUARANTEES ME THE RIGHT TO HAVE EFFECTIVE  
14 COUNSEL, AND BEING CHARGED WITH A FELONY AND SO SAID THAT I AM, --  
15 EVERY LEVEL OF THESE PROCEEDINGS AND TRIAL, -- COUNSEL AS GUARANTEED  
16 BY MY RIGHTS AS THE ACCUSED BY THE CONSTITUTION OF THE UNITED  
17 STATES. SEE EXHIBIT D, "PAGE 12, RT EXCERPT 326, LINES 7-25, SEE ALSO EXHIBIT A,  
18 PAGE 13, RT EXCERPT 327, LINES 2-6, 9-15, 17-23, 25, SEE ALSO EXHIBIT "D" PAGE 14, RT EXCERPT,  
19 328, LINES 14, 61. SEE NOW EXHIBIT B, "PAGE 23, RT EXCERPT 329, LINES 1-10, 18, 20-23,  
20 AND 27. SEE NOW EXHIBIT D, "PAGE 22, RT EXCERPT 330, LINES 6-9, 12-13, MR. TROCHAI: -- TOOK  
21 PICTURES OF THE CAR AS IT WAS AT THE SCENE AT HIS HOUSE; TOWED THE CAR BACK  
22 TO THE EL CAJON POLICE DEPARTMENT, AND TOOK PICTURES THERE; MR. ADAIR: PERHAPS  
23 TO SUPPLEMENT THE RECORD, AT THE TIME OF THE SUPPRESSION MOTION, WE DID  
24 NOT HAVE PHOTOGRAPHS, -- THERE IS A PHOTOGRAPH OF MR. BURTON'S CAR AS IT'S  
25 PARKED DIRECTLY IN FRONT OF HIS UNIT. IT'S OUR POSITION THAT THE CAR WAS  
26 PART OF THE CURTILAGE OF MR. BURTON'S RESIDENCE AND COULD NOT BE  
27 SEARCHED WITHOUT A SEARCH WARRANT. THE COURT: AND WHERE WAS IT  
28 PARKED EXACTLY? MR. ADAIR: IT WAS PARKED APPARENTLY DIRECTLY IN FRONT

6



1 OF HIS UNIT. I THINK THAT'S WHAT THE PHOTOGRAPH WOULD SHOW. --  
2 THE COURT: IF YOU WANT TO SUBMIT THE PHOTOGRAPHS FOR THE RECORD, YOU  
3 MAY DO THAT. (MR. ADAIR REVIEWS THE PHOTOGRAPHS. MR. ADAIR: YES, YOUR HONOR.  
4 THANK YOU. THE COURT: ALL RIGHT. -- PHOTO OF DEFENDANT'S VEHICLE, WAS  
5 MARKED FOR IDENTIFICATION.) THE COURT: DID YOU SHOW IT TO MR. TROCHA?  
6 MR. TROCHA: I'VE SEEN THE PICTURE, YOUR HONOR. THE COURT: ALL RIGHT. IF  
7 YOU WANT TO EXPLAIN FOR THE RECORD, WHAT IT DEPICTS AND WHAT WOULD  
8 BE -- MR. ADAIR: I THINK WE CAN STIPULATE FACTS. -- MR. TROCHA: IT'S  
9 ESSENTIALLY DEFENDANT'S CAR PARKED IN HIS PARKING SPACE, IT'S PROPERTY OF  
10 THE APARTMENT COMPLEX HE LIVES IN. MR. ADAIR: DIRECTLY ON THE  
11 OTHER SIDE OF THE CAR -- IS MR. BURTON'S APARTMENT UNIT, WHICH WOULD  
12 BE SEEN OVER THE HOOD -- OVER THE TOP OF THE CAR. AND THE -- CORRESPONDS,  
13 I BELIEVE, TO HIS UNIT. BELIEVE THE MANAGER HAD TESTIFIED AT THE HEARING  
14 (1538.5) THAT HE WAS STANDING THERE IN FRONT OF HIS UNIT WITHIN  
15 A COUPLE OF FEET OF THE DOOR, WHEN THE -- WITH MR. BURTON AT THE  
16 TIME THE POLICE ARRIVED. -- FRONT OF THE MANAGERS UNIT, THE CAR  
17 WAS PARKED IN MR. BURTON'S SPACE, -- IN FRONT OF MR. BURTON'S  
18 APARTMENT, AND IT'S OUR CONTENTION THAT MR. BURTON WAS NOT IN  
19 CONTACT WITH THE CAR, THE CAR IS PARKED IN THE CORTILAGE  
20 OF MR. BURTON'S APARTMENT AND NEEDED A SEARCH WARRANT TO  
21 BE SEARCHED. THE COURT: PROCEDURALLY I COULD EVEN CONSIDER THE  
22 MOTION. AND THEN WE NEED TO GET OVER THAT HURDLE BEFORE WE GO TO THE  
23 NEXT. MR. ADAIR: WELL, WE'VE REQUESTED PHOTOGRAPHS -- I THINK IT STARTED WITH  
24 WITH THE PRIOR ATTORNEY ON THE CASE APPROXIMATELY A YEAR AGO REQUESTING  
25 PHOTOGRAPHS. AND THEY -- THAT WAS IN A FORM OF, I THINK A LETTER AND AN  
26 ACTUAL FIELD MOTION THAT WAS NEVER HEARD, A DISCOVERY MOTION  
27 THAT WAS LAST YEAR. I FOLLOWED UP WITH A LETTER -- SUPPRESSION MOTION -- CONCERNING  
28 THE SUPPRESSION MOTION. THE COURT: MR. TROCHA, DO YOU HAVE ANYTHING IN RESPONSE?

1 MR. TROCHA: "I DON'T KNOW THE HISTORY OF THE PHOTOGRAPHS OR ANYTHING."  
2 THE COURT: OKAY, THE COURT: (SEE EXHIBIT "D" PAGE 22, RT EXCERPT 330, LINES 6-9, 12, 13)  
3 SO I DON'T BELIEVE THAT I DO HAVE JURISDICTION TO ENTERTAIN THE MOTION.  
4 AND EVEN IF I DID, THE THEORIS PREVIOUSLY EXPLAINED BY THE PEOPLE AND  
5 THE VEHICLE EXCEPTION AND -- APPEAR TO APPLY, SO FOR ALL THOSE REASONS THE  
6 MOTION IS DENIED, SEE NOW EXHIBIT "D," PAGE 23, RT EXCERPT 331, LINES  
7 14-16, 34, 17-19, 22, 23. MR. ADAIR: WE'D ASK THE CASE BE DISMISSED FOR  
8 THE DESTRUCTION OF EVIDENCE THAT MIGHT TEND TO SHOW MR. BURTON'S  
9 INNOCENCE. MR. TROCHA (LINES 3 AND 4) THEY WERE INADVERTENTLY DESTROYED  
10 BY THE POLICE DEPARTMENT, THE COURT: WELL THAT MOTION WILL BE DENIED.  
11 AND I THINK THAT THAT MOTION HAS BEEN RAISED BEFORE IF MY MEMORY'S CORRECT,  
12 LET ME LOOK BACK, WELL, I DON'T. -- IT WAS INADVERTENTLY DESTROYED AND THE  
13 MOTION IS DENIED. SEE EXHIBIT "D," PAGE 37, RT EXCERPT 0068, LINE 27, AND  
14 ALSO SEE EXHIBIT "D," PAGE 38, RT EXCERPT 0069, LINES 1, 2, 4, 5, 18, 22-26 -- 10  
15 STATES "MORE SPECIFICALLY, (1538.5) THIS MOTION IS BASED ON VIOLATION OF  
16 DEFENDANTS REASONABLE EXPECTATION OF PRIVACY, AS GUARANTEED BY THE  
17 FOURTH, FIFTH, AND FOURTEETH AMENDMENTS TO THE UNITED STATES CONSTITUTION,  
18 AND ON THE FOLLOWING GROUNDS: -- THE POLICE ACTION WAS WITHOUT A WARRANT,  
19 AND LACKED SUFFICIENT CAUSE TO JUSTIFY THE INVASION OF LIBERTY COMPLAINED  
20 OF, -- THE ARREST OUTSIDE DEFENDANTS PLACE OF RESIDENCE WITHOUT A  
21 WARRANT -- THIS MOTION WILL BE BASED ON THE FOLLOWING EVIDENCE! --  
22 MEMORANDUM AND POINTS OF AUTHORITY, DATED 10-19-04 (SIGNED BY MR. PLUMMER  
23 SEE EXHIBIT "D" PAGE 1, RT EXCERPT 0132, LINES 1-28, SEE ALSO EXHIBIT "D"  
24 PAGE 2, RT EXCERPT 0133, LINES 1-28. SEE EXHIBIT "D" PAGE 9, RT EXCERPT  
25 323, LINES 5, 10, 13, 18, 19, 22, 23, 24, 26, 27, 28. SEE ALSO EXHIBIT "D," PAGE,  
26 10, RT EXCERPT 324, LINES 1-5, 10. MR. ADAIR: I GUESS A FURTHER  
27 TROMBETTA MOTION -- (MEANING DEFENDANT) -- HE WAS DOING OTHER THINGS,  
28 THE COURT: ALL RIGHT ANY RESPONSE TO THAT? MR. TROCHA: I MEAN, --



1 CELL PHONE, I DON'T KNOW. BUT I REVIEWED THE EVIDENCE.  
2 MR. ADAIR: IS THIS THE CELL PHONE THAT BELONGED TO MR.  
3 BURTON? MR. TROCHA: I DON'T KNOW WHO IT BELONGED TO.  
4 THE COURT: OKAY. -- AND I DON'T HAVE SUFFICIENT EVIDENCE  
5 AT THIS POINT -- PARTICULARLY UNDER A TROMBETTA MOTION -- SO  
6 THAT MOTION IS DENIED. MR. ADAIR THERE IS ONE OTHER WITNESS  
7 (ALIBI WITNESS) APPARENTLY, ACCORDING TO MR. BURTON, THAT  
8 HE MAY WANT CALLED, AND THAT'S BARBARA SAVAGLIO,  
9 THE COURT: MS. SAVAGLIO, ALL RIGHT. THANK YOU. SEE EXHIBIT D,"  
10 ~~PAGE 43, RT EXCERPT 35, T WISEWB - PAGE 41, RT EXCERPT 33, LINES 16-28.~~  
11 ~~SEE ALSO EXHIBIT D, PAGE 44, T WISEWB - PAGE 42, RT EXCERPT 34, LINES 1-5,~~  
12 ~~SEE ALSO EXHIBIT D, PAGE 43, RT EXCERPT 35, LINES 1-19, 21, 22, 24-28.~~  
13 BY MS. HANNAH: Q. OFFICER HOLMES, WHERE ARE YOU EMPLOYED? A. OFFICER HOLMES,  
14 POLICE OFFICER WITH THE CITY OF EL CAJON. Q. HOW LONG HAVE YOU BEEN SO  
15 EMPLOYED? A. THREE YEARS. Q. WERE YOU WORKING ON MARCH 19TH OF THE  
16 YEAR 2004? A. I WAS. Q. DO YOU RECALL WHAT SHIFT YOU WERE WORKING?  
17 A. DAY SHIFT, PATROL. Q. DID YOU RECEIVE A DISPATCH CALL OR RESPOND  
18 TO DISPATCH CALL TO REPORT TO 425 EAST MAIN STREET?  
19 A. I DID. Q. DID YOU, IN FACT, RESPOND TO THAT ADDRESS? A. YES  
20 Q. DO YOU RECALL APPROXIMATELY WHAT TIME YOU RESPONDED  
21 TO THAT LOCATION? A. I DON'T RECALL THE TIME OFF HAND,  
22 I KNOW IT WAS THE AFTERNOON. BY MS. HANNAH: Q. OFFICER  
23 HOLMES, WHEN YOU ARRIVED AT THAT LOCATION, WERE YOU ALONE  
24 OR WITH A PARTNER? A. I WAS ALONE AT THAT TIME. Q. WHEN YOU  
25 ARRIVED WERE THERE OTHER POLICE OFFICERS ARRIVING AT THE  
26 SAME TIME OR WERE YOU THE FIRST TO ARRIVE? A. I WAS THE FIRST Q.  
27 WHEN YOU ARRIVED AT 425 EAST MAIN STREET, DID YOU IMMEDIATELY  
28 SEE THE DEFENDANT? A. YES. Q. COULD YOU DESCRIBE TO US WHERE HE

1 WAS AND WHAT HE WAS DOING? A. HE WAS -- IN ORDER TO GET TO THE  
2 APARTMENT COMPLEX, YOU HAVE TO DRIVE THROUGH A DRIVEWAY IN  
3 BETWEEN TWO BUSINESSES, AND IT OPENS UP INTO A PARKING LOT.  
4 HE WAS STANDING DIRECTLY -- IF YOU DROVE STRAIGHT DOWN THE  
5 DRIVEWAY, DIRECTLY OUT IN FRONT OF ONE OF THE APARTMENTS.  
6 Q. WAS HE INSIDE A VEHICLE OR OUTSIDE A VEHICLE? A. NO, HE WAS  
7 OUTSIDE. -- Q. DID YOU NOTICE HOW CLOSE HE WAS OR WHETHER  
8 OR NOT HE WAS STANDING CLOSE TO A VEHICLE? A. -- THERE WERE  
9 VEHICLES IN THE PARKING LOT, BUT I WASN'T REALLY, AT THAT POINT  
10 IN TIME, PAYING ATTENTION TO ANY VEHICLES IN PARTICULAR. SEE EXHIBIT "D",  
11 PAGE 44, R.T. EXCERPT 36, LINES 1-7, 9, 10, 11, 15, 16, 17, SEE ALSO EXHIBIT "D" PAGE  
12 45, R.T. EXCERPT 37, LINES 5, 13, 15, 16, 17, 20-24, SEE EXHIBIT "D", PAGE 46,  
13 R.T. EXCERPT 38, LINES 8-18, 21-26, SEE EXHIBIT "D", PAGE 47, R.T. EXCERPT 39,  
14 LINES 4-6, 9-11, 19-25, 28. SEE EXHIBIT "D", PAGE 48, R.T. EXCERPT 40, LINES  
15 1-5, 8-11, 19-28, SEE ALSO EXHIBIT "D", PAGE 49, R.T. EXCERPT 41, LINES 1-28,  
16 SEE EXHIBIT "D", PAGE 50, R.T. EXCERPT 42, LINES 1-3, 7-23. SEE ALSO  
17 EXHIBIT "D", PAGE 51, R.T. EXCERPT 43, LINES 1-5, 9-26. BY MS. HANNAH:  
18 Q. (OFFICER HOLMES ANSWERING) WHEN YOU SAW THE DEFENDANT  
19 WHAT DID YOU DO? A. I CONDUCTED WHAT WE WOULD CALL A  
20 PEDESTRIAN HOT STOP. Q. CAN YOU PLEASE DESCRIBE FOR THE COURT  
21 WHAT THAT IS? A. BASICALLY, JUST GIVING HIM DIRECTION AT  
22 GUNPOINT. Q. WHEN YOU GAVE THESE INSTRUCTIONS, DID THE  
23 DEFENDANT RESPOND? A. YES. BY MS. HANNAH: Q. WHAT INSTRUCTIONS  
24 DID YOU GIVE HIM? A. (OFFICER HOLMES) -- FROM ME, HAD HIM KNEELING  
25 DOWN, PUT HIS HANDS BEHIND HIS HEAD AND SPREAD HIS KNEES ACROSS  
26 HIS ANKLES SO THAT HE WAS IN A POSITION WHERE HE COULDN'T  
27 EASILY MOVE. Q. AT SOME POINT DID YOU PLACE THE DEFENDANT INTO  
28 HAND CUFFS? A. I DID NOT, BUT HE WAS PLACED INTO HAND CUFFS. Q. DID

HD

MR. E. W. BURTON - FORTY TWO INCHES  
P.O. BOX 5246 - CSATF/SP CI-132L  
COR CORAN, CA. 93212

1 YOU OBSERVE THAT HAPPENING? A. YES Q. HOW LONG AFTER YOU  
2 ARRIVED DID YOU ESTIMATE THAT YOU PLACED THE DEFENDANT INTO  
3 CUSTODY? A. AS FAR AS PUTTING HIM INTO HANDCUFFS? Q. YES,  
4 A. PROBABLY WITHIN 10, 15 SECONDS. Q. DID YOU OBSERVE ANY OTHER  
5 PERSONS AROUND THE DEFENDANT'S LOCATION EITHER BEFORE OR AFTER  
6 THE DEFENDANT WAS PLACED INTO HANDCUFFS? A. YES. Q. WHO DID YOU  
7 NOTICE? A. THERE WAS A SUBJECT WHO HAD LATER BEEN Q. WHAT  
8 HAPPENED TO THAT SECOND INDIVIDUAL? A. I TOLD HIM TO REMAIN  
9 WHERE HE WAS WHILE I WAS GIVING MR. BURTON DIRECTIONS, AND HE  
10 STOOD BY WITH HIS HANDS IN THE AIR WHILE WE SECURED MR. BURTON IN  
11 HANDCUFFS. Q. AFTER MR. BURTON WAS PLACED INTO HANDCUFFS, DID AN AGENT  
12 OR OFFICER KIRK ARRIVE? A. YES, Q. CAN YOU TELL US WHAT YOU  
13 OBSERVED OR HEARD? A. AS I WAS WALKING MR. BURTON TO THE  
14 PATROL CAR, AGENT KIRK ASKED HIM WHERE THE (ALLEGED) WEAPON  
15 WAS OR THE (ALLEGED) GUN WAS. I Q. DID YOU HEAR AGENT KIRK  
16 ASK THE DEFENDANT IF HE COULD SEARCH THE RESIDENCE? A. I DID  
17 NOT. Q. WERE YOU THE OFFICER THAT TRANSPORTED THE DEFENDANT  
18 TO EL CAJON POLICE STATION? A. YES. Q. WHEN DID THAT OCCUR?  
19 A. WITHIN A FEW MINUTES OF PLACING HIM UNDER ARREST, I  
20 THINK I GOT SOME INFORMATION FROM THE OTHER SUBJECT  
21 WHO WAS THERE WITH HIM, Q. WHEN YOU TRANSPORTED THE  
22 DEFENDANT TO THE POLICE STATION, DID YOU PROCESS THE  
23 DEFENDANT? A. YES. Q. AT SOME POINT DID YOU INDICATE TO THE  
24 DEPARTMENT THAT ANOTHER OFFICER WOULD THEN COME IN AND SPEAK  
25 WITH HIM? A. I DID. Q. OFFICER HOLMES, AT THE POLICE STATION  
26 YOU INDICATED THAT YOU TOLD THE DEFENDANT ANOTHER OFFICER  
27 WOULD SPEAK TO HIM, IS THAT CORRECT? A. YES. Q. UPON INFORMING  
28 THE DEFENDANT THAT ANOTHER OFFICER WOULD BE IN TO SPEAK WITH

~~11~~

11

1 HIM, DID THE DEFENDANT HAVE A RESPONSE? A. YES, HE DID. Q. DO YOU  
2 REMEMBER WHAT HIS REPLY WAS? A. HE TOLD ME THAT HE  
3 WOULD LIKE TO SPEAK TO AN ATTORNEY AND EXERCISE HIS 5TH  
4 AMENDMENT RIGHT; Q. DID HE USE THAT LANGUAGE SPECIFICALLY  
5 "CONCERNING MY 5TH AMENDMENT RIGHTS"? A. YES HE DID,  
6 MS. HANNAH: THANK YOU. NOTHING FURTHER. THE COURT: MR. ADAIR. MR.  
7 ADAIR: THANK YOU, YOUR HONOR. CROSS-EXAMINATION BY MR. ADAIR:  
8 Q. OFFICER HOLMES, GOOD MORNING. A. GOOD MORNING. Q. OFFICER  
9 YOU ARRIVED AT THE LOCATION WHERE MR. BURTON WAS; CORRECT?  
10 A. CORRECT. Q. I TAKE IT YOU WERE THE FIRST OFFICER OUT OR ON THAT  
11 SCENE; CORRECT? A. YES. Q. YOU HAD YOUR GUN OUT? A. EVENTUALLY, YES.  
12 Q. MR. BURTON WAS THERE WITH HIS HANDS UP AT SOME POINT? A. CORRECT.  
13 Q. WAS IT THAT POINT WHERE THE OTHER OFFICERS STARTED TO  
14 ARRIVE? A. CORRECT, AND THE PROCESS I DIDN'T EXACTLY SEE BECAUSE  
15 I WAS FOCUSED ON HIM, BUT THEY WERE ARRIVING DURING THAT  
16 PROCESS, YES. Q. YOU SAID THAT YOU DIDN'T HANDCUFF HIM BUT SOMEBODY  
17 ELSE DID? A. CORRECT. Q. AND DID YOU STILL HAVE YOUR GUN OUT  
18 COVERING MR. BURTON AT THAT TIME? A. YES. Q. WHOSE RESPONSIBILITY  
19 WAS MR. BURTON AT THAT TIME? A. I WOULD SAY MINE. Q. AND DID YOU  
20 STAY WITH MR. BURTON TO MAKE SURE THAT HE DIDN'T DO ANYTHING THAT  
21 WOULD BE DANGEROUS TO THE OFFICERS OR ANYBODY ELSE? A. I GUESS  
22 I'M NOT UNDERSTANDING YOUR QUESTION. Q. ALL RIGHT. PUT IT SIMPLY,  
23 YOU WERE STILL WATCHING MR. BURTON VERY CLOSELY; A. I MEAN,  
24 THERE WERE TWO OTHER OFFICERS ON THE SCENE, SO IT WASN'T THAT  
25 I WAS DIRECTLY STANDING THERE WATCHING HIM FOR 100 PERCENT OF  
26 THE TIME. THERE WERE OTHER THINGS THAT WERE GOING ON AT THAT  
27 TIME. "ONCE HE WAS SECURED," Q. DID YOU PUT MR. BURTON IN YOUR PATROL  
28 VEHICLE? A. YES. Q. WHEN HE WAS IN YOUR PATROL CAR, WERE YOU



### STATEMENT OF FACTS

THE TRIAL JUDGE HON. LAURA HALGREN, DEPORTED HERSELF AS A MATERIAL WITNESS TO FACT ON CENSURE COURT BUSINESS RECORDS, THE TRIAL JUDGE HON. LAURA HALGREN ON OR ABOUT FEBRUARY, SIGNED OFF ON THE RESTRAINING ORDER AND ISSUED A TRO AGAINST MR. THOMAS AS HE APPEARED IN HER FAMILY COURT EX PARTE HEARING OF MR. BURTON AND MS. SANDERS. PETITIONER WAS AFRAID WHEN HE RECOGNIZED THE VOICE OF MR. THOMAS IN HER COURTROOM. PETITIONER ALERTED TRIAL JUDGE'S BALIFF OF HIS PRESENCE AND GAVE THE BALIFF THE EVIDENCE OF HIS RESTRAINING ORDER WHO THEN SERVED MR. THOMAS. THE TRIAL JUDGE HALGREN ORDERED HIM TO LEAVE THE COURT HOUSE AND BECAUSE PETITIONER WAS SO AFRAID FOR HIS LIFE THE TRIAL JUDGE HALGREN ORDERED HER FEMALE WHITE BALIFF AND ANOTHER WHITE MALE DEPUTY TO ESCORT PETITIONER THROUGH REAR COURT BUILDING AREA TO ESCAPE A POSSIBLE ASSAULT BY THOMAS. INITIALLY PETITIONER WAS THE PETITIONER OF THE ACTION, BUT THE TRIAL JUDGE CONVERTED PETITIONER INTO A DEFENDANT, STATING ERRONEOUSLY THAT THE ACTION BEGAN IN THE CHILD SUPPORT DIVISION. A MATTER OF WHICH HAD ALREADY BEEN RESOLVED IN THE CHILD SUPPORT DIVISION 10/04. PETITIONER WAS A PROPER LITIGANT WHO AFTER SIGNING OUT OF A COURT CLERK FILE A CASE INVOLVING MS. SANDERS AND MR. THOMAS, OF WHICH HE VANDALIZED HER VEHICLE AND THREATENED "TO KICK HER ASS", PETITIONER HAD ALSO BECAME AWARE BY THE FILES OBTAINED, THAT THERE HAD BEEN A PREVIOUS ORDER OF PROTECTION FOR ANGELA SANDERS, ANDRE LEWIS, AYONA FRENCH, AND DREONA BURTON AGAINST MR. THOMAS, INCIDENTS AND FACTS PETITIONER WAS AWARE OF PRIOR TO THE DAY IN QUESTION 19 MARCH 04.



PETITIONER HAD RECEIVED INSTRUCTION ON RESTRAINING ORDER,  
HOW TO APPLY FOR EMERGENCY CUSTODY OF HIS  
MINOR DAUGHTER DREONA BURTON FROM THE EL CAJON  
COURT FAMILY FACILITATOR'S OFFICE WHO  
TYPED UP ALL THE COURT PAPERS, AS MS. SANDER'S  
HAD TOLD PETITIONER ABOUT HER SON ANDRE LEWIS  
BEING MOLESTED DURING THE TIME SHE WAS  
WITH MR. THOMAS'S. MR. THOMAS HAD THREATENED  
TO KILL PETITIONER IN FRONT OF HIS DAUGHTER  
DREONA BURTON APPROX 13 FEB 04, PETITIONER HAD  
SHERIFF MARSHALL'S SERVE ANGELA SANDER'S  
NOTICE TO APPEAR AND MR. THOMAS OF WHOM WAS  
LIVING WITH SANDER'S AT THE TIME AT 171 E.  
LEXINGTON AVE E.C. CA. SANDER'S TOLD MARSHALL'S ~~THOMAS~~  
~~THOMAS DIDN'T LIVE THERE AS WELL AS THE SANDER'S~~  
TRIAL JUDGE HALGREN AT THE EX PARTE HEARING  
WHO MADE US SWITCH SEATS, CONVERTING PETITIONER  
FROM PLAINTIFF TO DEFENDANT. PETITIONER HAD  
ALLEGED THAT MS. SANDER'S HAD FAILED TO  
PROTECT HIS MINOR DAUGHTER FROM MR. THOMAS'S ABUSE  
DESPITE A PREVIOUS ORDER OF PROTECTION HE HAD  
BECAME AWARE OF AFTER SIGNING OUT THE FILE  
ON OR ABOUT 20 FEB. 04. PETITIONER WAS DENIED  
HIS OFFER TO SHOW THIS PROOF BY JUDGE HALGREN,  
WHO THEN DISCLOSED THAT MR. THOMAS ASSAULTED  
SANDER'S AT A CLUB OF SORTS, SOON THEREAFTER  
MR. THOMAS PRESENCE WAS ANNOUNCED THROUGH  
INQUIRY BY THE TRIAL JUDGE. DEFENSE COUNSEL  
ADAIR FAILED TO NOTIFY THE COURT OF IT'S BEING A  
MATERIAL WITNESS TO FACT TIMELY BEFORE TRIAL  
PER DEFENDANTS REPEATED URGING. IN ADDITION THE  
POLICE AND PROSECUTION HELD POSSESSED AND SUPPRESSED  
FAVORABLE MATERIAL EXCULPATORY EVIDENCE (ALLEGED)  
DEFENCE EXHIBIT F. PROSECUTOR STATED ON RECORD THAT  
HE HAD GONE THROUGH THE "BACK PACK" AND SHOULD'VE  
KNOWN ABOUT AND DISCLOSED EVIDENCE FAVORABLE

1 ~~A HE WAS-- IN ORDER TO GET TO THE APARTMENT COMPLEX, YOU HAD TO DRIVE~~  
2 ~~TO DRIVE THROUGH A DRIVEWAY IN BETWEEN TWO BUSINESSES, AND IT~~  
3 ~~OPENS UP INTO A CUNY~~  
4 TO DEFENSE PRIOR TO JULY 27, 05, THE SECOND  
5 WEEK OF TRIAL, THE TRIAL JUDGE PREJUDICALLY  
6 DENIED ADMISSIBLE EVIDENCE UNDER 352, EVIDENCE  
7 WHICH SUPPORTED DEFENDANT'S STATE OF MIND, SINCE  
8 THE COURT AND PROSECUTION, DESPITE EVIDENCE  
9 HELD IN THEIR POSSESSION THAT PETITIONER HAD  
10 KNOWN ABOUT MR. THOMAS'S CRIMINAL VIOLENCE,  
11 PRISON RECORD, PAROLE, PREVIOUS PROTECTION  
12 ORDER FOR HIS MINOR DAUGHTER DREONIA BURTON.  
13 DISAPITE THE VIOLATION OF THE TRIAL JUDGES TRO,  
14 PROTECTING PETITIONER'S MINOR DAUGHTER DREONIA  
15 BURTON, AS THOMAS BY HIS OWN TESTIMONY THE  
16 JUDGE FAILED TO MAKE AN ARREST AND CHARGE  
17 MR THOMAS, AT LEAST TO PETITIONER'S KNOWLEDGE,  
18 AS THE ORDER'S OF A FAMILY COURT JUDGE  
19 SUPERSEDES ANY OTHER ORDER OF A STATE COURT  
20 JUDGE, ALSO, PETITIONER BEING A LAYMAN WAS  
21 MANIPULATED BY MR. ADAIR TO A PEREMPTORY CHALLENGE  
22 IN A CONFLICT OF INTEREST OF THE MAGISTRATE THAT  
23 BOUND HIM OVER FOR TRIAL JUDGE HANCIAN. PETITIONER  
24 BELIEVES LEGALLY THIS COULD NOT BE DONE UNDER  
25 17016, AND WAS DONE TO DENY PETITIONER OF HIS 14TH  
26 AMENDMENT EQUAL PROTECTION. THE TRIAL JUDGE  
27 HON. L. HALGREN WAS A DEPORTED MATERIAL WITNESS ON  
28 GENUINE OFFICIAL "STIPULATED" COURT BUSINESS RECORDS

1 STATEMENT OF FACTS -

2 THE TRIAL JUDGE HON. L. HALGREN, REPORTED HERSELF AS A MATERIAL  
3 WITNESS TO FACT, I.E. THAT ALLEGED VICTIM, <sup>MR. THOMAS</sup> WAS SERVED IN HER  
4 COURT ROOM ON OR ABOUT 23 FEB. 04. EVIDENCE OF HIM STALKING  
5 DEFENDANT APPROX 3 WEEKS BEFORE THE DAY IN QUESTION OF 19 MARCH 04.  
6 THE TRIAL JUDGE WAS A BIAS PREJUDICIAL TRIER OF FACT, AS SHE  
7 DENIED ALL OF DEFENDANT'S PRO SE MOTIONS, FAILED TO RULE ON HIS  
8 PRETRIAL MOTIONS, WAS A MATERIAL WITNESS <sup>TO FACTS</sup> ON GENUINE COURT  
9 BUSINESS RECORDS AS THE ONE WHO SIGNED OFF ON THE  
10 PRO, AGAINST MR. THOMAS, <sup>INDISSEED</sup> PROTECTING BOTH THE DEFENDANT  
11 AND HIS MINOR DAUGHTER DREONA BURTON, THE TRIAL JUDGE  
12 DESPITE OF EVIDENCE THAT MR. THOMAS ON 19 MARCH 04;  
13 HAD MADE UNLAWFULLY PHYSICAL CONTACT WITH  
14 DREONA BURTON, AND UNDER THE CALIFORNIA PENAL CODE  
15 STATUTES, STATE OF CALIFORNIA JURISDICTION, BY HIS OWN  
16 TESTIMONY AND MRS. SANDERS UNDER THE LAW HAD KIDNAPPED  
17 PETITIONER'S MINOR DAUGHTER BY MOVING HER VIA TELEPHONE  
18 AND MANIPULATION BY HER MOTHER ANGELA SANDERS WITHIN  
19 THE COUNTY OF SAN DIEGO FROM HER HOME, AGAINST  
20 COURT ORDERS, THE TRIAL JUDGE HON. L. HALGREN FAILED  
21 TO MAKE A DUAL ARREST, DENIED PETITIONER OF HIS FEDERAL  
22 GUARANTEED RIGHT TO A FAIR AND IMPARTIAL TRIAL, VIOLATING  
23 HIS 14TH U.S. CONST AMENDMENT DUE PROCESS AND EQUAL PROTECTION  
24 CLAUSES, RIGHT TO COMPULSORY <sup>PROCESS</sup> OF THE 6TH AMENDMENT  
25 AND RIGHT TO CROSS-EXAMINE UNDER THE FIFTH AMENDMENT  
26 DUE PROCESS CLAUSE, AS WELL AS HIS RIGHT TO DISCOVERY  
27 DISCLOSURE BY THE PROSECUTION, AFTER A DEFENSE DISCOVERY  
28 MOTION HAD BEEN FILED AND SERVED 7-30-04 ON DA. MS. HANNAH



1 WHO DEFENSE COUNSEL MR. PLUMMER, AND MR. ADAIR, STATES THAT  
2 PROSECUTION FAILED TO RESPOND. FURTHERMORE PETITIONER CONTENDS  
3 THAT THE DENIAL OF HIS MOTION FOR A MISTRIAL, BY HIMSELF AND  
4 COUNSEL WAS ERRONEOUS AND PREJUDICIAL IN LIGHT OF THE  
5 RELAYED DISCLOSURE BY DEFENDANT AND DEFENSE COUNSEL  
6 AT TRIAL MARS DEN HEARING, THAT SHE WAS ALERTED THAT  
7 SHE WAS IN FACT A MATERIAL WITNESS ON STIPULATED GENUINE  
8 COURT BUSINESS RECORDS, AND SHERIFF MARSHALL BUSINESS  
9 RECORDS BOTH HER AND HER BALIFF A. JANE DOE, ACTING  
10 UNDER COLOR OF LAW AS A COURT BALIFF, E.C.C.A, CALIFORNIA  
11 STATE JURISDICTION. IN LIGHT OF THE FACT OF EVIDENCE, THE  
12 NEWLY DISCOVERED DEFENSE EVIDENCE OF THE ADVERSE TRIER OF  
13 FACT, AND COUNSEL'S KNOWING FAILURE TO NOTIFY THE COURTS  
14 THE COURT ERRORED PREJUDICIALLY IN DENYING DEFENDANT HIS  
15 MARS DEN AS COUNSEL'S CONFLICTING INTEREST AND THE REPORTATION  
16 THROUGH GOVERNMENT MIS CONDUCT, DENIED PETITIONER HIS  
17 FEDERALLY GUARANTEED RIGHT TO MAKE A DEFENSE AS WE  
18 KNOW IT. THE TRIAL COURT PREVENTED DEFENDANT FROM  
19 MAKING ANY MOTIONS, OR OBJECTION, BY STATING ANY MOTIONS  
20 HAVE TO BE MADE THROUGH COUNSEL. DURING SENTENCING  
21 THE COURT WENT ON TO VIOLATE PETITIONERS FEDERALLY  
22 GUARANTEED RIGHT TO NOTICE, IN THAT PROSECUTION  
23 WITHOUT GIVING DEFENDANT PRIOR NOTICE OR OPPORTUNITY  
24 TO CROSS EXAMINE, SENTENCED DEFENDANT ON AN UNPROVEN,  
25 UNCHARGED, AND UNDISCLOSED ALLEGED VICTIM A, KATH MANCEY.  
26 DEFENDANT RECEIVED A CULMATIVE PENALTY IN VIOLATION OF HIS  
27 5<sup>TH</sup>, 6<sup>TH</sup>, AND 14<sup>TH</sup>, DUE PROCESS, EQUAL PROTECTION CLAUSES AND  
28 RIGHT TO NOTICE, <sup>RIGHT TO CROSS EXAMINE, RIGHT TO COMPULSORY PROCESS.</sup> EVEN FURTHER. THE COURT MISLEAD

PETITIONER AFTER STATING, TO HIM ON RECORD OF EXCERPTS INCLUDED IN THIS PETITIONER, THAT DEFENDANTS, ALLEGED ADMISSIONS THAT WERE UNLAWFULLY OBTAINED AFTER HIS INVOCATION OF HIS 6TH, AND 5TH AMENDMENT RIGHTS TO OFFICER HOLMES AT TIME OF ARRIVAL AT E.C. POLICE STATION ON 19 MARCH 04, OFFICER INITIATED CONVERSATION AFTER DEFENDANT INVOKED HIS RIGHT TO COUNSEL AND RIGHT TO REMAIN SILENT, PETITIONER WAS NOT FREE TO GO AND UNDER ARREST WITHOUT PROBABLE CAUSE, NOR INTERFERENCE WITHIN 15 SECONDS AFTER POLICE INITIATED CONTACT EXCEEDING THE TERRY LINE OF AUTHORITY IN HIS REASONABLE EXPECTATION OF PRIVACY IN HIS PRIVATE RESIDENTIAL AREA, ALLEGED BY POLICE TO BE MAKING A PHONE CALL, AFTER WHICH THE INVOCATION OF PETITIONER'S 6TH AND 5TH AMENDMENT RIGHTS. PETITIONER WAS STRIPPED NAKED, BAREFOOT, FREEZING, SHACKLED, AND FORCED TO INTERROGATION ROOM, OF WHICH HE REINVOKED HIS 5TH AND 6TH AMENDMENT RIGHTS TO COUNSEL, ANY ALLEGED ADMISSIONS OR ANY RESPONSES WAS DUE TO POLICE INITIATED CONVERSATION, AND COERSIVE POLICE ATMOSPHERE, AND SHOCKS TO DEFENDANTS CONSCIOUS BY ENSLAVEMENT OF SHACKLES, AND INTIMIDATION BY ALL WHITE MALE OFFICERS, AS PETITIONER IS AFRICAN AMERICAN, POLICE WITHOUT CONSENT UNLAWFULLY ENTERED, SEARCH, AND SEIZED HIS HOME, AND VEHICLE PARKED ON THE CURTILAGE WARRANTLESSLY, AS RULED BY THE HON. JUDGE PREBLE APPROX 24 FEB. 04, A 4TH/14TH AMENDMENT VIOLATION IN HIS REASONABLE EXPECTATION OF PRIVACY, THE TRIAL JUDGE HON. L. HALGREN ABUSED HER DISCRETION, AND LACKED JURISDICTION TO AND DENIED PETITIONER A WRIT OF MANDATE, PROSECUTION FAILED TO DISCLOSE THE FACT THAT KATH MINCEY, AT THE ALLEGED



1 CRIME SCENE, IS IN FACT A CONVICTED FELONY, WHO WAS A  
2 REPRESENTATIVE IN THE PRISONER/PAROLEE CLASS LAWSUIT  
3 AGAINST A CALIFORNIA GOVERNOR REPRESENTING THE VISUALLY IMPAIRED  
4 PLAINTIFF CLASS, PROSECUTIONS FAILURE TO DISCLOSE  
5 THIS DEPORTED WITNESS, AND DEVALUE HIS CRIMINAL PAST  
6 VIOLATED PETITIONERS FEDERAL GUARANTEED RIGHT TO  
7 DUE PROCESS, EQUAL PROTECTION AND RIGHT TO DISCOVERY,  
8 PARTICULARLY AFTER TRIAL, WITHOUT INDICTMENT OF A  
9 GRAND JURY PRIOR OPPORTUNITY FOR CROSS-EXAMINATION,  
10 PETITIONER ALSO SPECULATES THAT A KIAN MINCEY WAS  
11 MISS REPRESENTED AT OCT 21, 05 SENTENCING, BY A JUNIOR  
12 CHILD OF THE SAME NAME, AS PETITIONER AS OF APPROX 9-07  
13 RECEIVE A POST TRIAL VICTIM'S COMPENSATION GOVERNMENT CLAIM <sup>FROM MR. PARKS</sup>  
14 OF AN ALLEGED VICTIM A, "KIAN MINCEY DATE OF BIRTH IN THE  
15 YEAR "1963", AT ANY RATE, PROSECUTION, FAILED TO GIVE PRIOR  
16 NOTICE OF THIS ALLEGED VICTIM, THAT WAS NOT ON  
17 PROSECUTIONS WITNESS LIST FOR TRIAL. THE COURT  
18 ALSO WENT AGAINST IT'S OWN ASSERTIONS, AND RELIED UPON  
19 A POLICE REPORT OF OFFICER CONSALVES, AFTER PETITIONER HAD  
20 INVOKED HIS 5TH AND 6TH AMENDMENT RIGHT, INADMISSIBLE EVIDENCE  
21 UNDER CRAWFORD, AS IT IS NOT A BUSINESS RECORD, AND AFTER  
22 ASSURING PETITIONER AT TRIAL THAT HIS ALLEGED ADMISSIONS  
23 WERE NOT BEING USED, <sup>PROSECUTION</sup> USED THEM AND RELIED UPON A FALSE  
24 PROBATION REPORT AS PETITIONER WAS NEVER INTERVIEWED BY A  
25 MS. PARKS, WHO RELIED UPON OFFICER CONSALVES POLICE REPORT  
26 PETITIONER HAD NO PRIOR OPPORTUNITY TO CROSS EXAMINE MISS PARKS,  
27 PETITIONER FURTHER CONTENDS AS WILL BE SUPPORTED BY THE  
28 EXCERPTS THAT THE ARRAIGNMENT OF AN AMENDED COMPLAINT

WITHOUT PRIOR NOTICE VIOLATED HIS FEDERALLY GUARANTEED  
14TH U.S. CONST. AMENDMENT RIGHT TO NOTICE AND DUE PROCESS AND  
EQUAL PROTECTION CLAUSES. THE ACCUSATIONAL DELAY VIOLATED  
HIS FEDERALLY GUARANTEED RIGHT TO A <sup>FAIR TRIAL</sup> FAIR TRIAL, AND WAS  
DONE TO TAKE UNFAIR TACTICAL ADVANTAGE OF PETITIONER, AS  
THE CRAFTING OF STATUTES BY THE PROSECUTOR NOT IN  
THE CAL. JCS, AND THE UNCONSTITUTIONAL CHANGING OF THE  
CHARGING INDICTMENT NOT SUPPORTED BY THE EVIDENCE  
AT THE PRELIMINARY HEARING, THAT WERE BASED ON TESTIMONY  
RELATED TO UNCONSTITUTIONALLY SEIZED EVIDENCE LATER  
SUPPRESSED. AFTER THE 1538.5 JUDGE CONCLUDING AN UNLAWFUL  
ENTRY, SEARCH AND SEIZURE BY POLICE WARRANTLESSLY AND  
WITHOUT CONSENT, IN VIOLATION OF THE 14TH AMENDMENT AS  
WELL AS THE 4TH AMENDMENT. PROSECUTION'S FAILURE TO  
DISCLOSE MATERIAL EXCULATORY EVIDENCE VIOLATED PETITIONER'S  
FEDERALLY DUE PROCESS AND EQUAL PROTECTIONS OF THE 14TH U.S.  
CONST. AMENDMENT. THE FAILURE OF THE PROSECUTION TO  
DISCLOSE SPECIFICALLY REQUESTED MATERIALS AFTER  
A DEFENSE DISCOVERY MOTION HAD BEEN FILED, AND PROSECUTION'S  
REBUTTAL STATING "I DON'T KNOW THE HISTORY OF THE  
PHOTOGRAPH'S OR ANYTHING," DOES NOT QUALIFY TO JUSTIFY  
THE FAILURE TO DISCLOSE. PROSECUTION HAS AN INDEPENDANT  
DUTY TO DISCLOSE, PETITIONER WAS TAKEN BY SURPRISE  
BOTH AT TRIAL AND SENTENCING, WAS PREVENTED, AND SHOCKED,  
TO OBJECT BY THE TRIAL JUDGE, COUNSEL ADAIR DID OBJECT TO  
THE MANDATORY NATURE AND INELIGIBILITY FOR PROBATION.  
ALSO, THERE IS AN IMPERMISSIBLE CONSTITUTIONAL VARIABLE,  
BY ALLEGED EYE WITNESS SHANE COLBERT, WHO DESCRIBES

1 THE ALLEGED SUSPECT, AS A 20 YEAR OLD, ONE PERSON ALONE  
2 AS PROSECUTION RELATES A BLACK ~~VEHICLE~~ <sup>JETTA VEHICLE</sup> ADVERSE DEFENSE  
3 WITNESS MCKELVEY WAS IN PETITIONERS HOME AT TIME OF HIS  
4 ARREST, PETITIONER'S HOME APARTMENT WAS 425 E. MAIN ST #5, EC, CA,  
5 PETITIONER WAS STANDING IN THE THRESHOLD OF HIS APARTMENT  
6 MANAGER'S DOOR WAY APT #6, OF SPECIFIC NOTE MCKELVEY WAS  
7 IN PETITIONERS APARTMENT UNBEKNOWNST TO HIM, WHEN OFFICERS  
8 ARRIVED, AND SEIZED <sup>HIS PERSON</sup> UNLAWFUL EVIDENCE, PETITIONER WAS NOT  
9 IN POSSESSION OF ANY PHONE, BACK PACK, VEHICLE OR ANY OTHER  
10 INSTRUMENT. IN FACT PETITIONER WAS 25 FEET AWAY FROM HIS  
11 HOME AND VEHICLE AT THE TIME HIS PERSON WAS UNLAWFULLY  
12 SEIZED, HANDCUFF, AND ARRESTED, IN HIS REASONABLE  
13 EXPECTATION OF PRIVACY, PETITIONER NOW AGE 44, WAS A  
14 MATURE LOOKING GRANDFATHER OF AGE 40 AT TIME OF  
15 HIS ARREST, PETITIONER WAS IN CUSTODY IN PATROL VEHICLE  
16 DURING THE SEARCH WITHOUT CONSENT, AND INTERROGATION  
17 OF HIS HOME AND VEHICLE PARKED ON THE CURTILAGE. NOW  
18 SEE EXHIBIT "A", PAGE 112, RT EXCERPT 815, LINES 5, 6, 8-12, 16-18, 21-25, SEE  
19 ALSO EXHIBIT "A", PAGE 113, RT EXCERPT 816, LINES 1-25, SEE EXHIBIT "A", PAGE 114, RT  
20 EXCERPT 817, LINES 1, 2, 4-10, 21-28, SEE EXHIBIT "A", PAGE 115, RT EXCERPT 818

ARGUMENT, STATEMENT OF FACTS,

IT IS CLEAR FROM THE STATEMENTS OF FACTS IN THE ATTACHED <sup>AND ARGUMENTS ENCLOSED</sup> ~~EXCERPTS~~ <sup>EXCERPTS</sup> THAT PETITIONER'S FEDERALLY GUARANTEED 14TH AMENDMENT DUE PROCESS RIGHTS AND EQUAL PROTECTION CLAUSES WERE BLATANTLY VIOLATED BY THE PROSECUTIONS FAILURE TO DISCLOSE MATERIAL EXCULPATORY EVIDENCE REQUESTED APPROXIMATELY A YEAR BEFORE TRIAL BY A DEFENSE DISCOVERY MOTION THAT PROSECUTION, BY DEFENSE COUNSEL'S MR. PLUMMER'S AND MR. ADAMS ACCOUNT FAILED TO RESPOND, AND ALSO THE TRIAL COURT'S PREJUDICIALLY ACTIONS OF TAKING THE DISCOVERY MOTION PROCEEDINGS OFF CALENDAR WITHOUT WRITTEN NOTICE TO DEFENDANT. THE LOSS AND DESTRUCTION OF THE 911 TAPES PROVING THE DEFENDANT'S INNOCENCE, AFTER A DEFENSE MOTION FOR DISCOVERY WAS SERVED ON D.A. MS. HANNAH ON OR ABOUT 7-30-04, THAT SHE BY DEFENSE COUNSEL ACCOUNTS FAILED TO RESPOND TO. HER (MS. HANNAH'S) ALLEGED RESPONSE, CONTRADICTS MR. TROCHA'S ACCOUNT IN STATING THAT THEY WERE NEVER REQUESTED, HOWEVER AS PETITIONER HAS ILLUSTRATED BY THE EXCERPT OF THIS PETITION, SPECIFICALLY, IN EXHIBIT "D", PAGE 24, R.T. EXCERPT 0026, LINES 1, 9, 15, 17-29, PETITIONER DENIES OMITTED PORTIONS, PETITIONER ALSO STIPULATES THAT HE DIDN'T RECEIVE A SERVED COPY OF THE ALLEGED RESPONSE AS HE NOTICED IN UPON RECEIPT OF SOME TRANSCRIPTS FROM APPEALS COUNSEL MS. KORYN AFTER REMITTUR. PETITIONER HAD NEVER BEEN PERSONALLY SERVED A WRITTEN NOTICE.



THE DESTRUCTION OF THE ALLEGED CRIME SCENE AND FAILURE BY  
THE POLICE TO PRESERVE MATERIAL EXCULPATORY EVIDENCE e.g. UDMIT.  
THE HOSING DOWN OF THE STREET, THE HOSING DOWN OF THE GRASS,  
AS DEFENSE COULD NO LONGER GATHER COMPARATIVE EVIDENCE,  
THAT COULDN'T BEEN FORENSICALLY TESTED AS DEFENDANT HAD  
REQUESTED TO TEST EVIDENCE FOR ILLEGAL SUBSTANCES  
WELL IN ADVANCE OF TRIAL SEE EXHIBIT A, PAGE 25 RECENT 189  
LINES, SEE SUMMARY 1-8, 11-19, 21-28, SEE ALSO EXHIBIT A, PAGE 24 EXCERPT 190  
LINES 4. (16 MARCH 05 MARS DEN HEARING) THE DEFENDANT: DISSUADING OF A WITNESS  
(MEANING BY MR. THOMAS AT PRELIMINARY HEARING). MY DAUGHTER, BECAUSE SHE WAS  
ALSO A EQUAL PROTECTANT ON THAT ORDER, WHICH WAS VIOLATED. THE COURT:  
ALL RIGHT, ANY OTHER MOTIONS YOU THOUGHT SHOULD BE FILED? THE DEFENDANT:  
YES, ALSO, THERE ARE FALSE STATEMENTS THAT HAVE BEEN ENTERED INTO  
THE RECORD AS FAR AS WE ALLEGEDLY -- AS FAR AS THE MOTION THAT  
WAS WRITTEN TO 1538.5. THE COURT: ALL RIGHT. IS THAT THE SAME ISSUE  
YOU HAD RAISED TO JUDGE PRECKEL, WHERE THERE WAS CONCERN RAISED BY  
YOU THAT THE STATEMENT OF FACTS DIDN'T FULLY SET FORTH THINGS  
APPROPRIATELY? THE DEFENDANT: WELL, WITH JUDGE PRECKEL --  
THE COURT: I JUST WANT TO KNOW IF THAT'S THE SAME ISSUE YOU'RE TALKING  
ABOUT? THE DEFENDANT: -- BUT I WAS DENIED MY MARS DEN BY JUDGE  
PRECKEL. HE NEVER GAVE ME AN OPPORTUNITY TO. THE COURT: -- WHAT  
OTHER ISSUES ARE THERE BEYOND WHAT YOU'VE TOLD ME HAVE NOT  
BEEN ADEQUATE BY THE DEFENSE? THE DEFENDANT: THE FACTS OF THE  
CASE HAVE BEEN MISSTATED -- I ASKED HIM TO FILE A MOTION WITH



THE JUDGE -- YOURSELF -- ORDERING PROSECUTION TO TURN OVER ALL  
DISCOVERY BECAUSE MOTIONS THAT WERE FILED BY MR. PLUMMER JULY --  
TO COMPEL PROSECUTION TO TURN OVER ALL DISCOVERY. SEE EXHIBIT "A",  
PAGE 27, RTEXCERPT 191, LINES 18-28. SEE ALSO EXHIBIT "A", PAGE 29, RTEXCERPT 193,  
LINES 12-25. > THE COURT: IS THAT SOMETHING YOU HAD ORIGINALLY ASKED  
~~YOUR EARLIER~~<sup>IN</sup> THE DEFENDANT: EXTRAORDINARY WRIT OF MANDATE FOR REVIEW  
OF THE 1538.5 MOTION -- APPEALING JUDGE PRECKEL'S DECISION AS FAR AS HIS  
DENIAL OF SUPPRESSING THE VEHICLE, BECAUSE THE VEHICLE WAS  
UNLAWFULLY ENTERED, SEIZED AND REMOVED FROM MY RESIDENCE  
WITHOUT -- THE COURT: -- THE WRIT OF MANDATE FROM THE  
SUPPRESSION? THE DEFENDANT: YES. THE COURT: HOW LONG HAVE  
YOU BEEN REPRESENTING MR. BURTON? MR. ADAIR: SINCE SOMETIME IN  
NOVEMBER. THE COURT: WAS HIS SUMMARY OF THE SEQUENCE OF  
EVENTS ACCURATE, TO THE BEST OF YOUR KNOWLEDGE? MR. ADAIR: I  
BELIEVE IT WAS. PUBLIC DEFENDER FIRST WITH MR. ERICSEN. THERE  
WAS A CONFLICT. HE GOT OFF. MR. PLUMMER WAS APPOINTED, PCC,  
REPRESENTED MR. BURTON UNTIL ABOUT NOVEMBER, -- AND MR. NEWTON  
WAS APPOINTED THROUGH PCC. AND WITHIN A DAY OR SO, MR. NEWTON  
REALIZED THERE WAS A CONFLICT, AND I WAS APPOINTED.  
THE COURT: OKAY, AND IF YOU COULD BRIEFLY EXPLAIN WHAT TYPE  
OF WORK YOU'VE DONE TO REPRESENT MR. BURTON SINCE YOU CAME ONTO  
THE CASE? MR. ADAIR: SEE EXHIBIT "A" PAGE 31, RTEXCERPT 195, LINES  
2, 7-9, 14, 15, SEE ALSO EXHIBIT "A", PAGE 32, RTEXCERPT 196, LINES 17-23, 25-28.  
SEE ALSO, EXHIBIT "A", PAGE 33, RTEXCERPT 197, LINES 1, 4, 7, 8, 10, 16-20. SEE ALSO  
EXHIBIT "A", PAGE 34, RTEXCERPT 198, LINES 3, 6, 8-17, 21-23, 25, 27, 28. > THE COURT:

BEFORE WE GO DOWN HIS LIST OF COMPLAINTS, MR. ADAIR: WELL, PART OF IT IS MR. BURTON HAS BEEN DOING A LOT OF RESEARCH ON HIS OWN IN THE LAW LIBRARY AND HAS A LOT OF LEGAL THEORIES AS FAR AS WHY THE CASE SHOULD BE DISMISSED. THE COURT: WHY DON'T WE GO, THEN TO THE ISSUES HE'S RAISED, AND IF YOU COULD BRIEFLY RESPOND. HE FIRST RAISED. THE COURT: -- MEETING WITH HIM, AND SO DO YOU HAVE ANY TYPE OF ESTIMATE TO -- SINCE YOU CAME ON THE CASE BACK IN NOVEMBER (04) DO YOU HAVE ANY WAY TO ESTIMATE HOW OFTEN YOU'VE EITHER MET FACE TO FACE OR BY. MR. ADAIR: I DON'T KNOW -- I DON'T KNOW HOW MANY TIMES ON THE TELEPHONE WE'VE TALKED. I DID NOT TALK TO HIM MONDAY BECAUSE I -- AFTER WE TRIALED THE CASE FOR TWO DAYS, I HAD TO LEAVE IMMEDIATELY TO MAKE AN APPOINTMENT DOWNTOWN. HE WAS NOT IN THE COURTROOM FOR THE TRIALING. THE COURT: HE INDICATES THAT -- INSUFFICIENT, MR. ADAIR: WELL, THE THREATS ON THE CELL PHONE -- I HAVE NOT CHECKED ON THAT, BUT MY UNDERSTANDING WOULD BE ANY CONVERSATION WITH THREATS WOULD HAVE BEEN RECORDED ON SOME SORT OF VOICE MAIL THAT WOULD HAVE. THE COURT: "HE'S RAISED THE ISSUE ABOUT FORENSIC TESTING" -- AGAIN I CAME ON THE CASE SIX -- APPROXIMATELY SIX MONTHS, SEVEN, EIGHT MONTHS -- EIGHT MONTHS LATER. AND AT LEAST "IN MY MIND" -- IT WOULD APPEAR THAT ANY ATTEMPT TO DO LUMINAL TESTING OR WHATEVER WILL NOT BE PRODUCTIVE. SEE EXHIBIT A, PAGE 63, RTEKCEPRT 252, LINES 18-26-28, ALSO SEE EXHIBIT "A", PAGE 64, RTEKCEPRT 253, LINES 1, 19, 23, 24, SEE EXHIBIT "A" PAGE 67, RTEKCEPRT 256, LINES 4, 5, 10, 16, SEE EXHIBIT A, PAGE 69, RTEKCEPRT 258, LINES 6-13, 15, 16, 27, 28, SEE ALSO EXHIBIT "A", PAGE 70, RTEKCEPRT 259, LINES 1-9, 13-15, 21, 22, 27, 28, SEE EXHIBIT A, PAGE 71, RTEKCEPRT 260, LINES 1-8, 13, 16-28, SEE EXHIBIT "A", PAGE 71, RTEKCEPRT 261, LINES 18-22, SEE EXHIBIT "A", PAGE 73, RTEKCEPRT 263, LINES 1-13, 15-17, 28, SEE EXHIBIT A, PAGE 74, RTEKCEPRT 264, LINES 1, 9, 17, 20-28.

1 SEE EXHIBIT "A", PAGE 75, RT. EXCERPT 265, LINES 1, 2, 9-13, 15, 16, 20-22, SEE  
2 EXHIBIT "A", PAGE 76, RT. EXCERPT 266, LINES 3-7, 16, 17, 21, 22, 25-28, SEE  
3 EXHIBIT "A", PAGE 77, RT. EXCERPT 267, LINES 1, 2, 16-28, SEE EXHIBIT "A", PAGE 78, RT  
4 EXCERPT 268, LINES 11, 14, 16 (STARTING WITH EXHIBIT "A", PAGE 63, RT. EXCERPT 252 LINE 16)  
5 (MARSDEN HEARING 6-01-05) THE COURT: WHY DO YOU THINK HE (MR. ADAIR) SHOULD  
6 BE DISCHARGED AS YOUR ATTORNEY OF RECORD? THE DEFENDANT: I HAVE RECKLESS  
7 (NEGLIGENT) MISREPRESENTATION - CONFLICT OF INTEREST -- PERTAINING TO  
8 MY SIXTH AMENDMENT RIGHTS, FROM WHAT I UNDERSTAND, NO ONE CAN PREVENT A  
9 CLIENT FROM HAVING CONTACT WITH HIS ATTORNEY. THE COURT: GO AHEAD.  
10 THE DEFENDANT: -- I BELIEVE, (MR. ADAIR) PREJUDICED THE COURT AGAINST ME.  
11 THE DEFENDANT: SIR. HE CAME TO YOU, HE MANIPULATED ME TO GET A PEREMPTORY  
12 CHALLENGE. THE COURT: WAS A PEREMPTORY CHALLENGE FILED IN THIS CASE?  
13 MR. ADAIR: IT WAS, YOUR HONOR. THE COURT: AGAINST WHO? MR. ADAIR: AGAINST JUDGE  
14 THE COURT: HANOIAN? MR. ADAIR: HANOIAN, YES, YOUR HONOR. STATEMENT OF  
15 RELEVANT FACTUAL BACK GROUND - JUDGE HANOIAN, WAS THE PRESIDING JUDGE  
16 OVER DEFENDANTS PRELIMINARY HEARING WHO BOUND PETITIONER OVER FOR TRIAL.  
17 PETITIONER DOESN'T BELIEVE HE COULD BE CONSTITUTIONALLY CHALLENGED  
18 AFTER DEFENDANT HAD PREVIOUSLY BEEN IN HIS COURT. THE DEFENDANT: (EXHIBIT "A", RT.  
19 EXCERPT 258, LINES 6, 13, 15, 16, 27, 28) I FELT THAT THE COURT ERRORED AND  
20 VIOLATED MY SIXTH AMENDMENT RIGHTS, THE JUDGE (HON L. HALGAEN) ALSO  
21 VIOLATED MY 14TH RIGHTS TO DUE PROCESS, AND WHEN YOUR DUE PROCESS IS  
22 VIOLATED, FROM MY UNDERSTANDING, I'D LIKE TO MOTION THE COURT TO  
23 RELEASE ME FROM CUSTODY. I HAVE BEEN UNLAWFULLY DETAINED  
24 THE COURT: NOW, MR. BURTON, -- WERE NOT HERE ON UNLAWFUL DETENTION  
25 OR PRO PER RIGHTS, THE COURT: OKAY. ALL RIGHT. ANYTHING FURTHER?  
26 THE DEFENDANT: YES, ALSO MR. ADAIR HAS BEEN MY ATTORNEY FOR APPROX-  
27 IMATELY SIX MONTHS. HE HAS FAILED TO GATHER MEDICAL EVIDENCE WHICH  
28 WOULD SUPPORT MY DEFENSE. I HAVE WITNESSES THAT I WANT

1 SUBPOENAED. HE HAS BASICALLY, I FELT, GIVEN ME AN INEFFECTIVE  
2 ASSISTANCE, THERE IS EVIDENCE THAT THE PROSECUTION IS SUPPRESSING  
3 THAT THE DEFENSE NEEDS TO EXAMINE -- THAT I WANTED  
4 TESTED FOR ILLEGAL SUBSTANCES AND ALCOHOL -- THE  
5 COMMUNICATION IS VERY POOR. THERE ARE PHONE CALLS THAT HAVE  
6 NOT BEEN ACCEPTED WHEN I WOULD CALL. THE COURT: HOW  
7 MANY ATTORNEYS HAVE YOU ALREADY HAD, MR. BURTON? THE DEFENDANT:  
8 WELL SIR, VICERIKSEN WAS THE FIRST AND HE HAD A CONFLICT  
9 BECAUSE HE REPRESENTED MR. THOMAS, I SAT IN JAIL FOR TWO WEEKS  
10 AND HAD NOT MET WITH AN ATTORNEY. THE NEXT ATTORNEY WAS MR. PL-  
11 UMMER. BECAUSE HE DID A MOTION, FRUIT OF THE POISONOUS TREE -  
12 - BEGIN WITH A MIRANDA (5TH, AND 6TH AMENDMENT) VIOLATION -- A  
13 FOURTH AMENDMENT VIOLATION, -- "ALL ITEMS SEIZED", WHICH  
14 DEEMED THE MOTION TO BE AN -- I WAS THEN ASSIGNED AN  
15 ATTORNEY NEWTON -- (ALLEGED) CODEFENDANT AND HE REPRESENTED  
16 HIM THE DAY OF MY PRELIMINARY HEARING -- CONFLICT OF  
17 INTEREST AND THEN I WAS ASSIGNED MR. ADAIR. THE COURT: ANYTHING  
18 ELSE ON YOUR MARSDEN HEARING, ON YOUR MARSDEN MOTION? THE COURT:  
19 MR. ADAIR, PLEASE RESPOND, AMONG OTHER THINGS, TO THE COMMUNICATION  
20 ALLEGATION AND THE THIRD PARTY AND THE ACCUSATION THAT YOU'RE  
21 SEEKING TO INTRODUCE EVIDENCE THAT HAS OTHERWISE BEEN  
22 EXCLUDED, IF I UNDERSTAND CORRECTLY? MR. ADAIR: AS FAR AS  
23 COMMUNICATION, YOUR HONOR, -- BE MORE SPECIFIC, I DON'T HAVE  
24 THE DATES I HAVE MET WITH MR. BURTON WITH ME. I DON'T HAVE THEM IN AN  
25 ORGANIZED FASHION. AS FAR AS TRYING TO INTRODUCE EVIDENCE THAT  
26 HAS BEEN SUPPRESSED, -- CONCERNING DIFFERENT THINGS AND MY RESPONSE  
27 TO THEM, THE COURT: I'M NOT SURE I FOLLOW YOU, AS TO EVIDENTIARY  
28 MATTERS, DISAGREEMENTS BETWEEN THE TWO OF YOU ON EVIDENTIARY MATTERS



1 MR. ADAIR: PRETTY MUCH, YOUR HONOR. THE COURT: I ACKNOWLEDGE THAT  
2 THERE MAY BE DISAGREEMENTS AS TO EVIDENTIARY MATTERS.  
3 THAT GOES TO THE ATTORNEY/CLIENT RELATIONSHIP. I AM MOST  
4 CONCERNED ABOUT THE ACCUSATION OF THE COMMUNICATION -- AND  
5 THE ACCUSATION THAT YOU ARE NOT WORKING IN HIS BEST  
6 INTEREST BY SEEKING TO INTRODUCE EVIDENCE OR ASSISTING THE  
7 DISTRICT ATTORNEY, MR. ADAIR: -- HE WANTS CERTAIN THINGS  
8 DONE, THE COURT: ANYTHING FURTHER MR. BURTON? THE DEFENDANT:  
9 YES, SIR, YOUR HONOR, THE ISSUE -- EVIDENCE -- COMMUNICATION.  
10 THE COURT: ALL RIGHT, MR. ADAIR: WE DID SUBPOENA A NUMBER  
11 OF RECORDS. THE COURT: NOW MR. ADAIR, THIS MATTER WAS SENT  
12 OUT FOR TRIAL A COUPLE OF MONTHS AGO AND IT WAS ON THE EVE  
13 OF THAT TRIAL OR THE DAY OF THAT TRIAL THAT CRIMINAL PROCEED-  
14 INGS WERE SUSPENDED; SO IS IT A FAIR ASSUMPTION TO SAY  
15 THAT YOU WERE PREPARED FOR TRIAL AT THAT TIME? MR. ADAIR: I  
16 BELIEVE SO, YOUR HONOR, YES, SIR THE COURT: AND ERGO, YOU WILL  
17 BE PREPARED FOR A FUTURE TRIAL DATE MR. ADAIR: YES SIR.  
18 THE COURT: NOW, MR. BURTON, -- THE DEFENDANT: MY POINT IS, YOUR  
19 HONOR, THAT I'M INNOCENT OF ALL CHARGES, THE COURT: OKAY, FINE.  
20 NOW STOP. MR. ADAIR IS OBLIGATED TO COMMUNICATE WITH -- ALSO  
21 OBLIGATED TO GIVE YOU THE BENEFIT OF HIS PROFESSIONAL OPINION, --  
22 YOU HAVE CHOSEN TO PLEAD NOT GUILTY AND MAINTAIN YOUR INNOCENCE.  
23 SO YOU HAVE THE ABSOLUTE RIGHT TO DO SO. THE COURT: ANYTHING  
24 FURTHER MR. BURTON? THE DEFENDANT: THE PROBLEM IS, SIR, THAT I WAS  
25 UNLAWFULLY ARRESTED AND DETAINED, THE COURT: I DON'T WANT TO GO  
26 INTO THE FACTS OF THE CASE -- THERE IS NO BASIS TO DISCHARGE MR. ADAIR  
27 AT THIS TIME -- YOUR MOTION TO DISCHARGE HIM AS YOUR ATTORNEY OF RECORD  
28 IS DENIED. -- NOW, WE WILL BE OPEN AGAIN TO THE DISTRICT ATTORNEY.

1 WE ARE AGAIN IN SESSION, PRESENT, IS THE DISTRICT ATTORNEY, MR.  
2 TROCHA. THE PURPOSE OF THE HEARING NOW IS TO SET A TRIAL DATE  
3 AFTER CRIMINAL PROCEEDINGS HAVE BEEN REIN STATED, THE TRIAL  
4 WILL BE-- THREE DAYS REMAINING. IF YOU WANT IT ON THE 19TH, I CAN  
5 DO THAT WITH OR WITHOUT A TIME WAIVER. MR. ADAIR: HE'D PREFER NOT  
6 TO WAIVE TIME, THE COURT: ALL RIGHT. YOU STILL WANT IT ON THE  
7 19TH, MR. ADAIR? MR. ADAIR: YES, SIR. THE COURT: WITH THREE DAYS  
8 REMAINING? MR. ADAIR: YES, SIR. THE COURT: TUESDAY, JULY 19TH, 9 O'CLOCK  
9 A.M. IN THIS DEPARTMENT. MR. ADAIR: ALSO, THERE MAY BE, AS WE  
10 DISCUSSED, THERE MAY BE SOME RECORDS THAT I HANDED TO THE  
11 COURT PURSUANT TO A SUBPOENA, IF THOSE COULD BE RELEASED  
12 TO ME? THE COURT: WHO ARE THEY FROM? MR. ADAIR: THEY'RE  
13 MR. BURTON'S MEDICAL RECORDS. MR. TROCHA: "THEY'RE THE (ALLEGED)  
14 VICTIM'S POLICE RECORDS, THE COURT: WELL, SEE EXHIBIT "A", PAGE  
15 80, RT EXCEPT 797, LINES 1-11. THE COURT: (HON. L. HALGREN) ALL RIGHT,  
16 SO YOU HAVE YOUR FRAMEWORK AS TO WHAT YOU CAN DO. MR. ADAIR: YES,  
17 YOUR HONOR, THE COURT: I THINK-- MR. ADAIR: IT'S FUN BEING A PROSECUTOR.  
18 THE COURT: IT DOES PUT YOU IN A DIFFERENT ROLE, DOESN'T IT? ALL RIGHT,  
19 LET'S TALK ABOUT EXHIBITS. WE DON'T REALLY IN MY VIEW NEED TO  
20 DO THIS ON THE RECORD BECAUSE WE WILL DO A MORE FULL INSTRUCTION  
21 REVIEW ON THE RECORD AT THE END OF THE CASE. SEE EXHIBIT A, PAGE  
22 81, RT EXCEPT 0358 (7-19-05) SEE AT 10:00 AM. COURT IS AGAIN IN SESSION  
23 WITH ALL PARTIES PRESENT AS NOTED PREVIOUSLY, ATTORNEY ADAIR REQUESTS  
24 THAT MOTIONS THE DEFENDANT "PREVIOUSLY FILED, WITHOUT THE KNOWLEDGE OF  
25 ATTORNEY ADAIR BE ACCEPTED. THE MOTION IS DENIED. ~~SEE EXHIBIT "D", PAGE 27, RT~~ ~~EXCEPT 0359 (7-19-05, FIRST DAY OF TRIAL PRIOR TO JURY BEING SWORN FOR CAUSE)~~ ~~STATES~~ ~~ATTORNEY ADAIR MAKES A REQUEST FOR THE QUIT TAPES, THE PEOPLE INDICATE THAT THERE WAS~~  
26 ~~NEVER A REQUEST AND THE TAPES WERE RECORDED OVER. ATTORNEY ADAIR MAKES A MOTION~~  
27 ~~FOR THE QUIT TAPES, THE PEOPLE INDICATE THAT THERE WAS~~  
28 ~~NEVER A REQUEST AND THE TAPES WERE RECORDED OVER. ATTORNEY ADAIR MAKES A MOTION~~

1 TO DISMISS BASED ON DESTRUCTION OF EVIDENCE THAT SHOW THE DEFENDANTS  
2 INNOCENCE. THE MOTION IS DENIED; ATTORNEY ADAIR MAKES A DISCOVERY  
3 MOTION FOR PRODUCTION OF VIDEO FROM THE POLICE CAR. THE MOTION  
4 IS DENIED <sup>(SHOWING</sup> DEFENDANTS ARREST FROM OFFICER KIRKS AND HOLMES  
5 POLICE VEHICLES) THAT PROVES THE FACT THAT DEFENDANTS 14TH  
6 AMENDMENT RIGHTS WERE VIOLATED BY THE POLICE IN HIS  
7 REASONABLE EXPECTATION OF PRIVACY IN HIS PRIVATE RESIDENTIAL  
8 PLACE, WARRANTLESSLY SEIZED, IN HIS PERSON, HOME AND VEHICLE.  
9 BOTH OF WHICH AT THE TIME OF HIS ARREST, HE WAS NOT NEAR, NOR  
10 IN. SEE EXHIBIT "D" PAGE 19, RT. EXCERPT 164, LINES 21-28 THE COURT; AND  
11 LET'S TURN TO DEFENSE MOTIONS. AND LOOKING FIRST AT THE MOTION  
12 TO SUPPRESS DEFENDANT'S (ALLEGED) ADMISSIONS OR-- THE AUDIO  
13 INTERVIEW. AND AS I UNDERSTAND IT, AT THIS POINT, THE PEOPLE ARE NOT  
14 PLANNING TO PRESENT IT, ~~THOSE~~ STATEMENTS (ALLEGED) IN THEIR CASE-  
15 IN-CHIEF; IS THAT CORRECT? MS HANNAH: IT IS. THE COURT: ALL  
16 RIGHT. SEE NOW EXHIBIT "D" PAGE 20, RT EXCERPT 165, LINES 4-10, 13-19  
17 THE COURT: ALL RIGHT, IN LIGHT OF THAT, I DON'T THINK I NEED TO  
18 RULE ON THE MOTION. DO YOU AGREE? MR. ADAIR: I BELIEVE THAT'S  
19 CORRECT, YOUR HONOR. THE COURT: ALL RIGHT. DO YOU ANTICIPATE  
20 ANY MOTION OR-- I DON'T SEE ANYTHING HERE THAT WOULD GO TO  
21 BARRING PEOPLE'S -- SUCH AS VOLUNTARINESS, WHICH I-- MR. ADAIR: I  
22 BELIEVE MY CLIENT WHO WOULD BRING A FURTHER ISSUE CONCERNING  
23 VOLUNTARINESS-- HIS POSITION IS THAT HE WAS, IN ESSENCE TORTURED.  
24 THAT HE WAS PUT IN A PAPER SUIT, THAT HE WAS BARE FOOT, THAT  
25 HE WAS REFUSED THE RIGHT TO CALL AN ATTORNEY. AND THAT  
26 THERE WERE OTHER INFLICTIONS OF DISCOMFORT AND DISTRESS--  
27 THE COURT: ALL RIGHT. SEE EXHIBIT "D" PAGE 21 RT EXCERPT 166, LINES,  
28 8-10 THE COURT: "VOLUNTARY" ALSO HAS A LAY MEANING THAT MIGHT

MR. E. H. BURTON # F02720 IN PROPER  
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CORCORAN, CA 93212

1 BE VIEWED A LITTLE DIFFERENT BY MR. BURTON BECAUSE OBVIOUSLY  
2 HE WAS IN CUSTODY AND PROBABLY DIDN'T FEEL HE WAS FREE TO  
3 LEAVE. SEE EXHIBIT "D", PAGE 41, RTEXCERPT 33 LINES 15-28, AND ALSO SEE  
4 EXHIBIT "D" PAGE 42, RTEXCERPT 34, LINES 1-5, SEE EXHIBIT "D", PAGE 43, RTEXCERPT  
5 35, LINES 1-8, 10-19, 21, 22, 24-28, SEE ALSO EXHIBIT "D", PAGE 44, RTEXCERPT 36,  
6 LINES 1-7, 9-11, 15-17, SEE EXHIBIT "D", PAGE 45, RTEXCERPT 37, LINES 5, 13, 15-  
7 17, 20-24, SEE ALSO EXHIBIT "D", PAGE 46, RTEXCERPT 38, LINES 8-18, 21-27,  
8 SEE ALSO EXHIBIT "D" PAGE 47, RTEXCERPT 39, LINES 4-6, 19-25, 28, SEE ALSO  
9 EXHIBIT "D", PAGE 48, RTEXCERPT 40, LINES 1-5, 8-11, 19-25, 27, 28. SEE EXHIBIT  
10 "D" PAGE 49, RTEXCERPT 41 LINES 1-28, SEE EXHIBIT "D", PAGE 50, RTEXCERPT 42,  
11 LINES 1-3, 7-23, SEE EXHIBIT "D", PAGE 51, RTEXCERPT 43, LINES 1-5, 9-11,  
12 20-26 > DIRECT EXAMINATION (1538.5 HEARING ON OR ABOUT 1-31-05) BY  
13 DA. MS. HANNAH Q. OFFICER HOLMES, WHERE ARE YOU EMPLOYED? A. POLICE  
14 OFFICER WITH THE CITY OF EL CAJON. Q. HOW LONG HAVE YOU BEEN SO  
15 EMPLOYED? A. THREE YEARS. Q. WERE YOU WORKING ON MARCH 19TH OF  
16 THE YEAR 2004? A. I WAS. Q. DO YOU RECALL WHAT SHIFT YOU  
17 WERE WORKING? A. DAY SHIFT, PATROL. Q. DID YOU RECEIVE A DISPATCH  
18 CALL OR RESPOND TO DISPATCH CALL TO REPORT TO 425 EAST MAIN  
19 STREET? A. I DID. Q. DID YOU, IN FACT RESPOND TO THAT ADDRESS?  
20 A. YES Q. DO YOU RECALL APPROXIMATELY WHAT TIME YOU RESPONDED  
21 TO THAT LOCATION? A. I DON'T RECALL THE TIME OFF HAND, I KNOW  
22 IT WAS THE AFTERNOON. BY MS. HANNAH: Q. OFFICER HOLMES, WHEN YOU  
23 ARRIVED AT THAT LOCATION, WERE YOU ALONE OR WITH A PARTNER? A. I  
24 WAS ALONE AT THAT TIME. Q. WHEN YOU ARRIVED WERE THERE OTHER  
25 POLICE OFFICERS ARRIVING AT THE SAME TIME OR WERE YOU THE  
26 FIRST TO ARRIVE? A. I WAS THE FIRST. Q. WHEN YOU ARRIVED AT 425  
27 EAST MAIN STREET, DID YOU IMMEDIATELY SEE THE DEFENDANT? A. YES,  
28 Q. COULD YOU DESCRIBE TO US WHERE HE WAS AND WHAT HE WAS DOING?



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1 A. HE WAS -- COMPLEX -- HE WAS STANDING DIRECTLY -- IF YOU  
2 DROVE STRAIGHT DOWN THE DRIVEWAY, DIRECTLY OUT IN FRONT OF ONE  
3 OF THE APARTMENTS. Q. WAS HE INSIDE A VEHICLE OR OUTSIDE A  
4 VEHICLE? A. NO, HE WAS OUTSIDE. Q. DID YOU NOTICE HOW CLOSE  
5 HE WAS OR WHETHER OR NOT HE WAS STANDING CLOSE TO A VEHICLE?  
6 A. -- THERE WERE VEHICLES IN THE PARKING LOT, BUT I WASN'T  
7 REALLY, AT THAT POINT IN TIME, PAYING ATTENTION TO ANY VEHICLES  
8 IN PARTICULAR. Q. WHEN YOU SAW THE DEFENDANT, WHAT DID YOU DO?  
9 A. I CONDUCTED WHAT WE WOULD CALL A PEDESTRIAN HOT STOP.  
10 Q. CAN YOU PLEASE DESCRIBE FOR THE COURT WHAT THAT IS?  
11 A. BASICALLY, JUST GIVING HIM DIRECTION AT ON POINT. Q. WHEN YOU  
12 DID THIS, HAD OTHER OFFICERS ARRIVED AT THE SCENE A. YES.  
13 Q. WHEN YOU GAVE THESE INSTRUCTIONS, DID THE DEFENDANT RESPOND?  
14 A. YES BY MS. HANNAH. Q. WHAT INSTRUCTIONS DID YOU GIVE HIM? A. FROM  
15 ME, I HAD HIM KNEELING DOWN, PUT HIS HANDS BEHIND HIS HEAD AND  
16 SPREAD HIS KNEES ACROSS HIS ANKLES SO THAT HE WAS IN A  
17 POSITION WHERE HE COULDN'T EASILY MOVE. Q. AT SOME POINT  
18 DID YOU PLACE THE DEFENDANT INTO HAND CUFFS? A. I DID NOT, BUT  
19 HE WAS PLACED INTO HAND CUFFS. Q. DID YOU OBSERVE THAT HAPPENING?  
20 A. YES. Q. HOW LONG AFTER YOU ARRIVED DID YOU ESTIMATE THAT  
21 YOU PLACED THE DEFENDANT INTO CUSTODY? A. AS FAR AS PUTTING  
22 HAND CUFFS? Q. YES A. PROBABLY WITHIN 10, 15 SECONDS. Q. DID  
23 YOU OBSERVE ANY OTHER PERSONS AROUND THE DEFENDANT'S  
24 LOCATION EITHER BEFORE OR AFTER THE DEFENDANT WAS PLACED  
25 INTO HAND CUFFS? A. YES. Q. WHO DID YOU NOTICE? A. THERE WAS  
26 A SUBJECT WHO HAD LATER BEEN. Q. WHAT HAPPENED TO THAT  
27 SECOND INDIVIDUAL? A. I TOLD HIM TO REMAIN WHERE HE WAS  
28 WHILE I WAS GIVING MR. BURTON DIRECTIONS, AND HE STOOD BY

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1 WITH HIS HANDS IN THE AIR WHILE WE SECURED MR. BURTON  
2 IN HANDCUFFS. Q. AFTER MR. BURTON WAS PLACED INTO HANDCUFFS,  
3 DID AN AGENT OR OFFICER KIRK ARRIVE? A. YES. Q. CAN YOU TELL  
4 US WHAT YOU OBSERVED OR HEARD? A. AS I WAS WALKING MR. BURTON  
5 TO THE PATROL CAR, AGENT KIRK ASKED HIM WHERE THE (ALLEGED)  
6 WEAPON WAS OR THE (ALLEGED) GUN WAS. I Q. DID YOU HEAR  
7 AGENT KIRK ASK THE DEFENDANT IF HE COULD SEARCH THE RESIDENCE?  
8 A. I DID NOT, Q. WERE YOU THE OFFICER THAT TRANSPORTED THE  
9 DEFENDANT TO EL CAJON POLICE STATION? A. YES. Q. WHEN DID THAT OCCUR?  
10 A. WITHIN A FEW MINUTES OF PLACING HIM UNDER ARREST, I THINK I  
11 GOT SOME INFORMATION FROM THE OTHER SUBJECT WHO WAS  
12 THERE WITH HIM, Q. WHEN YOU TRANSPORTED THE DEFENDANT TO  
13 THE POLICE STATION DID YOU PROCESS THE DEFENDANT? A. YES.  
14 Q. AT SOME POINT DID YOU INDICATE TO THE DEFENDANT THAT  
15 ANOTHER OFFICER WOULD THEN COME IN AND SPEAK WITH HIM?  
16 A. I DID, Q. OFFICER HOLMES, AT THE POLICE STATION YOU INDICATED  
17 THAT YOU TOLD THE DEFENDANT ANOTHER OFFICER WOULD SPEAK  
18 TO HIM; IS THAT CORRECT? A. YES. Q. UPON INFORMING THE  
19 DEFENDANT THAT ANOTHER OFFICER WOULD BE IN TO SPEAK WITH  
20 HIM, DID THE DEFENDANT HAVE A RESPONSE? A. YES, HE DID, Q. DO YOU  
21 REMEMBER WHAT HIS REPLY WAS? A. HE TOLD ME THAT HE WOULD  
22 LIKE TO SPEAK TO AN ATTORNEY AND EXERCISE HIS 5TH AMENDMENT  
23 RIGHT, Q. DID HE USE THAT LANGUAGE SPECIFICALLY CONCERNING  
24 MY 5TH AMENDMENT RIGHTS? A. YES HE DID. MR. HANNAH: THANK YOU,  
25 NOTHING FURTHER, THE COURT: MR. ADAIR, MR. ADAIR: THANK YOU, YOUR  
26 HONOR, CROSS EXAMINATION BY MR. ADAIR: Q. OFFICER, YOU ARRIVED  
27 AT THE LOCATION WHERE MR. BURTON WAS; CORRECT? A. CORRECT, Q. I  
28 TAKE IT YOU WERE THE FIRST OFFICER OUT OR ON THAT SCENE; CORRECT?

MR. BURTON # E-2720 IN PROPER  
P.O. BOX 5246 CSATH/SP. CI-132C  
CORCORAN, CA. 93212

1 A. CORRECT. Q. ~~I TAKE IT YOU WERE THE FIRST OFFICER OUT~~ <sup>IN PROPER</sup>  
2 Q. YOU HAD YOUR GUN OUT? A. ~~INITIALLY~~ <sup>INITIALLY</sup>, YES. Q. MR. BURTON WAS  
3 THERE WITH HIS HANDS UP AT SOME POINT? A. CORRECT. Q. WAS  
4 IT THAT POINT WHERE THE OTHER OFFICERS STARTED TO ARRIVE?  
5 A. CORRECT, AND THE PROCESS I DIDN'T EXACTLY SEE BECAUSE I  
6 WAS FOCUSED ON HIM, BUT THEY WERE ARRIVING DURING THAT  
7 PROCESS, YES. Q. YOU SAID THAT YOU DIDN'T HANDCUFF HIM BUT  
8 SOMEBODY ELSE DID? A. CORRECT. Q. AND DID YOU STILL HAVE  
9 YOUR GUN OUT COVERING MR. BURTON AT THAT TIME? A. YES  
10 Q. WHOSE RESPONSIBILITY WAS MR. BURTON AT THAT TIME? A. I WOULD  
11 SAY MINE. Q. AND DID YOU STAY WITH MR. BURTON TO MAKE SURE THAT  
12 HE DIDN'T DO ANYTHING THAT WOULD BE DANGEROUS TO THE OFFICERS  
13 OR ANYBODY ELSE? A. I GUESS I'M NOT UNDERSTANDING YOUR  
14 QUESTION. Q. ALL RIGHT, PUT IT SIMPLY, YOU WERE STILL WATCHING  
15 MR. BURTON VERY CLOSELY? A. -- I MEAN, THERE WERE TWO OTHER  
16 OFFICERS ON THE SCENE, SO IT WASN'T THAT I WAS DIRECTLY  
17 STANDING THERE WATCHING HIM FOR 100 PERCENT OF THE TIME, THERE  
18 WERE OTHER THINGS THAT WERE GOING ON AT THAT TIME, ONCE  
19 HE WAS SECURED, Q. DID YOU PUT MR. BURTON IN YOUR PATROL  
20 VEHICLE? A. YES. Q. WHEN HE WAS IN YOUR PATROL CAR, WERE YOU THERE  
21 WITH HIM? A. THE ENTIRE TIME HE WAS IN PATROL CAR? Q. YES. A. I DON'T  
22 RECALL. Q. WERE THE WINDOWS DOWN IN YOUR PATROL CAR? A. -- BUT  
23 I CAN'T SPECIFICALLY RECALL THAT DAY, Q. AND I BELIEVE YOU  
24 TESTIFIED THAT YOU'VE WALKED MR. BURTON TO THE PATROL VEHICLE;  
25 CORRECT? A. CORRECT. Q. WHEN DID YOU WRITE YOUR REPORT? ~~IN YOUR~~  
26 Q. AND I BELIEVE YOU TESTIFIED TO THE FACT THAT YOU NEVER  
27 HEARD OR DID YOU EVER HEAR AGENT KIRK TALKING TO MR. BURTON? A.  
28 YES, I DID. Q. WHAT WAS SAID? A. THE PORTION THAT I HEARD WAS HIM  
29 ASKING MR. BURTON WHERE THE (ALLEGED) WEAPON WAS.

1 STATEMENT OF FACTS - SEE EXHIBIT "B", PAGE 65, RTEXCERPT 897, LINES 12-  
2 14, 16-28, SEE ALSO EXHIBIT "B", PAGE 66, RTEXCERPT 898 LINES 1-3, 11-28,  
3 SEE EXHIBIT "B", PAGE 67, RTEXCERPT 899, LINES 1-24, SEE EXHIBIT "B", PAGE  
4 68, RTEXCERPT 901, LINES 15-28, ALSO SEE EXHIBIT "B" PAGE 69, RTEXCERPT 902,  
5 LINES 1-13, 19, 20, 24. <sup>Sum 18-0</sup> SEE EXHIBIT "B", PAGE 70, RTEXCERPT 903, LINES 9, 10, 13,  
6 14, 19, 20, 27, 28. SEE EXHIBIT "B", PAGE 76, RTEXCERPT 908, LINES 1, 16-28.  
7 SEE ALSO EXHIBIT "B", PAGE 61, RTEXCERPT 892 (DATED 7-25-05), LINES 1-17, 20-  
8 28. THE COURT: OKAY, MR. TROCHA, ANYTHING ADDITIONAL THAT YOU WANTED  
9 TO SAY AS TO THE ISSUES RELATING TO THE POLICE REPORTS AND ALSO  
10 DEFENDANT'S - MR. TROCHA: YES, YOUR HONOR, FIRST, WITH THE POLICE REPORTS,  
11 MY ORIGINAL COMMENTS CAN STAND ON THEM IN THAT REGARD, BUT TO ADD  
12 TO IT THE MAIN PROBLEM WE ALSO HAVE WITH THESE POLICE REPORTS  
13 GOES TO THE TRUSTWORTHINESS PRONG SHOULD THE COURT EVEN BEGIN  
14 TO SEE THEM AS BUSINESS RECORDS, WHICH THEY AREN'T, THEY  
15 AREN'T RECORDS FROM A BUSINESS. YES, THE POLICE ARE MANDATED TO  
16 TAKE REPORTS, BUT THEY'RE NOT BUSINESS RECORDS OR OFFICIAL  
17 RECORDS IN THE FACT THAT THEY'RE MADE IN PREPARATION OF TRIAL.  
18 THEY'RE ALSO STOCKED FULL OF POLICE OFFICER'S OPINIONS. THOSE  
19 OPINIONS ARE BASED OFF OF THIRD PARTY HEARSAY. "IN THIS CASE WE  
20 CAN'T TEST THE HEARSAY DECLARANT AT ALL BECAUSE THEY WON'T BE  
21 IN COURT. IN ESSENCE, THE POLICE OFFICER SHOULD BE PRESENT IN COURT  
22 FOR THE PEOPLE TO CROSS-EXAMINE IN THAT REGARD. -- NEVER  
23 FACED CHARGES UPON THEM (PRIOR OFFENSE ALLEGATIONS) THEM, AND FROM  
24 THE BEST I CAN TELL, WAS NEVER EVEN ARRESTED. I THINK THAT'S  
25 COMPLETELY UNRELIABLE HEARSAY IN THIS CASE, THIS IS NOT A  
26 BUSINESS RECORD EXCEPTION, IT'S NOT EVEN CLOSE. "IT WOULD BE  
27 AS IF SOMEONE FROM MY OFFICE WROTE THEIR OPINIONS AS TO MR. BURTON  
28 --OR, IN ESSENCE, JUST PULL UP A BUNCH OF POLICE REPORTS IN THIS.



1 CASE WITHOUT PRESENTING ANY WITNESSES. MR. BURTON WOULDN'T HAVE ANY  
2 CHANCE TO CROSS-EXAMINE THOSE WITNESSES, BUT BECAUSE WE THINK THEY'RE  
3 RELIABLE, WE'RE GOING TO ADMIT THEM INTO EVIDENCE. ADDITIONALLY, THE FACT  
4 THAT THEY'RE USED FOR IMPEACHMENT PURPOSES FOR -- THE FACTS OF THE  
5 STATEMENTS COMING IN HAVE ALREADY COME IN. THE PAPERS IN WHICH  
6 THEY'RE PRINTED ON THEMSELVES DO NOT COME INTO EVIDENCE. THEY NEVER HAVE.  
7 THE PEOPLE URGES THE COURT TO STAY WITH THAT. THEY SHOULD NOT COME  
8 INTO EVIDENCE BECAUSE THEY ARE NOT EVIDENCE. THEY ARE INADMISSIBLE  
9 HEAR SAY. REFERRING TO 1370, THE CODE SECTION MR. ADAIR HAS BROUGHT UP,  
10 THAT CODE SECTION HAS BEEN JUST TORN APART BY CRAWFORD. WE'RE NOT  
11 ALLOWED TO USE THAT -- THE COURT, I KNOW, BUT WE DON'T HAVE A  
12 CRAWFORD ISSUE HERE. MR. TROCHA: WE DO IN THE FACT THAT CRAWFORD --  
13 IT APPLIES TO ALL HEAR SAY STATEMENTS. THE DECLARANT HAS TO BE AVAILABLE  
14 FOR CROSS-EXAMINATION. IT'S NOT JUST FOR THE DEFENDANT TO CROSS-EXAMINE,  
15 BUT FOR THE PEOPLE AS WELL. WHAT'S GOOD FOR THE GOOSE IS GOOD FOR  
16 THE GANDER, THE COURT: WELL, THAT RAISES A GOOD POINT. UNDER WHAT  
17 CONSTITUTIONAL AMENDMENT DOES CRAWFORD ARISE OUT OF, THE 5TH?  
18 MR. TROCHA: IT COMES OUT OF THE 5TH AND 6TH. IT'S THE RIGHT TO CROSS-  
19 EXAMINE WITNESSES, THE COURT: "BUT I THINK THAT'S THE DEFENDANT'S RIGHT."  
20 MR. TROCHA: THE WAY WE READ CRAWFORD IS IF THE PEOPLE CAN'T GET IT IN,  
21 THE DEFENDANT CAN'T GET IT IN EITHER, THERE'S NO HEAR SAY EXCEPTION  
22 SOLELY FOR DEFENDANTS, THE COURT: ALL RIGHT, THANK YOU, OKAY. GOING BACK  
23 TO THE POLICE REPORTS AS BUSINESS RECORDS OR OFFICIAL RECORDS, I'M  
24 NOT PERSUADED THAT THEY FALL WITHIN EITHER OF THOSE CATEGORIES.  
25 THE PROBLEM IS THE TRUSTWORTHINESS STANDARD. I THINK YOU HAVE TO TAKE  
26 A POLICE REPORT AS A WHOLE, AND YOU HAVE OFFICERS INVESTIGATING  
27 THEY'RE GETTING INFORMATION FROM VARIOUS SOURCES, THEY'RE RECORDING  
28 WHAT THEY SAW, WHAT THEY HEARD, WHAT THEY'RE TOLD, WHAT THEY'RE

1 TOLD ANOTHER PERSON SAID, IT HAS A WHOLE COMPILATION OF LAYERS OF  
2 INFORMATION, AND I DON'T THINK WHEN YOU'RE LOOKING AT THE TRUSTWORTH-  
3 INESS STANDARD FOR THE RECORD YOU CAN PICK AND CHOOSE AND SAY, "WELL,  
4 CERTAIN PARTS OF IT MIGHT BE TRUSTWORTHY AND CERTAIN PARTS MIGHT  
5 NOT," AND THEN SAY, "WELL, PART OF IT'S A BUSINESS RECORD AND PART OF  
6 IT'S NOT." I THINK THAT TEST GOES TO THE WHOLE RECORD, EITHER  
7 IT QUALIFIES AS A BUSINESS RECORD OR IT DOESN'T, AND FOR THAT  
8 REASON I JUST DON'T SEE THIS AS FALLING INTO EITHER CATEGORY,  
9 THE REPORTS ARE PREPARED FOR PURPOSES OF CRIME INVESTIGATION, FOR  
10 DOCUMENTATION, FOR POSSIBLE PROSECUTION, THEY'RE PREPARED WITH A  
11 MIND SET FROM A PROSECUTION AGENCY, WHICH I THINK IS DIFFERENT THAN  
12 A GENERAL BUSINESS RECORD KEPT BY A TELEPHONE COMPANY OR A BANK  
13 OR SOME OTHER INSTITUTION THAT NEEDS TO KEEP ACCURATE RECORDS  
14 JUST FOR PURPOSES OF KEEPING RECORDS, NOT FOR BUILDING A CASE,  
15 SO I DON'T SEE THAT THEY QUALIFY.--" I'M INTRIGUED BY THE CONCEPT  
16 THAT CRAWFORD MIGHT APPLY TO THE PROSECUTION AS WELL, --SO ENPROFEN  
17 ~~IF THE OFFICER SHOWS UP AND IS PREPARED TO TESTIFY, ENPROFEN~~  
18 MR. ADAIR: THANK YOU, THE COURT:-- AGAIN THAT WOULD BE A DOUBLE  
19 LAYER OF HEARSAY, AND SINCE THE POLICE REPORTS DON'T QUALIFY AS A  
20 BUSINESS RECORD OR OFFICIAL RECORD-- PARTICULARLY AT THE  
21 CRAWFORD ISSUE. OKAY GOING BACK THEN TO THE OTHER POINTS--  
22 I THINK, IS EVIDENCE CODE 1250, SEVERAL CASES THAT DID NOT ALLOW  
23 A DEFENDANT'S STATEMENT. MR. TROCHA: YES, YOUR HONOR. I ACTUALLY-- DEFENSE,  
24 WHEREIN THE PEOPLE ARE JUST SIMPLY NOT ALLOWED TO CROSS-EXAMINE  
25 ANYONE VERSUS THE MENTAL STATE OF THE DEFENDANT, IN ESSENCE, WE WOULD  
26 RUN INTO A GRIFFIN ERROR EVERY SINGLE TIME A CASE LIKE THIS CAME DOWN THE  
27 PIPELINE. BECAUSE WE'D HAVE THREE WITNESSES UP THERE TALKING ABOUT  
28 THE DEFENDANT'S MENTAL STATE OF WHICH THEY HAVE NO PERSONAL KNOWLEDGE,

MR. C. W. WITENBERG  
P.O. BOX 5246 - CSATF/SP-CI-1322  
CERRO GORDON, CA 93212

1 BECAUSE IT'S PARTICULAR TO THE DEFENDANT. IN ARGUMENT THE  
2 ONLY THING I COULD BE LEFT WITH IS-- THE ONLY PERSON YOU'D  
3 HEAR FROM ABOUT MENTAL STATE, WHO'S THE ONLY PERSON THAT'S  
4 ACTUALLY QUALIFIED TO TESTIFY ABOUT WHAT HE WAS  
5 THINKING AT THE TIME. 7 EL CAJON, CALIFORNIA; MONDAY, 7/25/05; 1:35  
6 P.M. (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT OUT OF  
7 THE PRESENCE OF THE JURY), THE COURT: WE'RE ON THE RECORD. COUNSEL  
8 AND DEFENDANT ARE PRESENT, JURY IS NOT PRESENT. I'VE REVIEWED THE  
9 LAW ON A FEW OF THE ISSUES WE DISCUSSED BEFORE OUR BREAK,  
10 DID EITHER COUNSEL WISH TO MAKE ANY ADDITIONAL COMMENTS?  
11 STARTING WITH THE ISSUE OF 1250 OF THE EVIDENCE CODE, ANY ADDITIONAL  
12 ARGUMENTS? MR. ADAIR: IF I COULD HAVE A MOMENT. IF YOU'RE TALKING  
13 ABOUT SPECIFICALLY THE BUSINESS RECORDS EXCEPTION OR--  
14 THE COURT: OR THAT AS WELL. ANY OF THE ARGUMENTS THAT YOU MADE  
15 BEFORE HAND MR. ADAIR: I DON'T-- I WAS LOOKING AT ALR-- AGAINST  
16 THE ADMISSION OF POLICE REPORTS. A LOT OF IT HAS TO DO WITH  
17 THE RELIABILITY OF THE POLICE REPORTS, BY THE WAY, THE  
18 FIRST THING PERHAPS TO KEEP IN MIND IS THAT GENERALLY  
19 POLICE REPORTS DON'T COME IN AGAINST THE DEFENDANT  
20 BECAUSE IT'S A DENIAL OF THE 6TH AMENDMENT RIGHT TO  
21 CROSS-EXAMINE AND CONFRONT WITNESSES, ANOTHER REASON  
22 WHY POLICE REPORTS DON'T COME IN IS BECAUSE THEY MAY NOT  
23 BE TRUSTWORTHY. THEY MAY CONTAIN THE OBSERVATIONS AND  
24 OPINIONS OF PEOPLE OTHER THAN THE -- SEE EXHIBIT D, PAGE 68, R.T  
25 EXCERPT 820, LINES, 1-9, 12-27 THE DEFENDANT; MR. PLUMMER'S IN  
26 LIMINE MOTION FOR THE FRUIT-OF-THE-POISONOUS-TREE BASED ON  
27 THE (5TH AND 6TH AMENDMENT) MIRANDA VIOLATION THAT HAPPENED PRIOR  
28 TO THE (14TH AMEND) 4TH AMENDMENT VIOLATION OF THE UNLAWFUL

PRO. 6015246 CSATF/SA-CI-132L

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1 ENTRY, UNLAWFUL SEARCH AND SEIZURE, AS RULED BY JUDGE ENO12WB  
 2 PRECKEL AT ENO12WB. -- I'D LIKE TO CITE CASE PEOPLE VERSUS  
 3 TURNER, 1984-- ( ) THE COURT: YOU'RE RELATING NOW--  
 4 THE DEFENDANT-- I'M TALKING ABOUT (5TH AND 6TH AMENDMENTS) MIRANDA  
 5 VIOLATION, WHEREAS I WAS ARRESTED-- THE COURT: "WE'VE ALREADY  
 6 RULED THAT YOUR (ALLEGED) STATEMENTS AREN'T COMING IN."  
 7 THE DEFENDANT-- FRUIT-OF-THE-POISONOUS-TREE MOTION WHERE  
 8 PROSECUTION CANNOT BENEFIT INDIRECTLY OR DIRECTLY FROM THE (5TH AND  
 9 6TH AMENDMENTS) MIRANDA VIOLATION, WHICH HAPPENED PRIOR TO THE  
 10 UNLAWFUL ENTRY, THE COURT: LET ME STOP YOU RIGHT THERE  
 11 I KNOW THE GROUNDS OF THE MOTION-- ATTORNEY WAS INCOMPETENT OR  
 12 NOT PROPERLY REPRESENTING YOU? THE DEFENDANT YES, THE COURT:  
 13 ALL RIGHT. -- MOST OF THE COMPLAINTS YOU HAVE RAISED RELATE TO  
 14 ISSUES THAT AROSE BEFORE TRIAL. SEE EXHIBIT "D," PAGE 70, RT EXCERPT 45 LINES 21-26.  
 15 SEE EXHIBIT "D," PAGE 46, RT EXCERPT 46, LINES 25-28, SEE ALSO  
 16 EXHIBIT "D" PAGE 72, RT EXCERPT 47, LINES 14, AND 21 (1538.5 HEARING  
 17 APPROX. 1-31-05 OFFICER KIRK TESTIFYING) THE COURT: PROCEED, BY MR. HANNAH:  
 18 Q. WHEN YOU ARRIVED AT THAT LOCATION, WHAT DID YOU FIND? A. OFFICER HOLMES  
 19 AND SERGEANT COIT WERE ALREADY ON THE SCENE. THERE WERE TWO BLACK  
 20 MALES, I BELIEVE, AT THAT-- Q. AFTER THE DEFENDANT WAS PLACED  
 21 INTO HANDCUFFS, DID YOU HAVE A CONVERSATION WITH THE DEFENDANT?  
 22 A. A SHORT CONVERSATION, YES. Q. WHAT WAS THE NATURE OF THAT  
 23 CONVERSATION? Q. WHEN YOU ASKED HIM ABOUT THE (ALLEGED) WEAPON, ABOUT  
 24 A-- A. I ASKED HIM WHERE THE (ALLEGED) WEAPON WAS. SEE EXHIBIT "D,"  
 25 PAGE 73, RT. 48, LINES 3, 9, 10, > (BY OFFICER KIRK) A. I ASKED HIM WHERE  
 26 THE (ALLEGED) GUN WAS HE USED IN THE-- MR. ADAIR: OBJECTION YOUR HONOR.  
 27 LEADING. THE COURT: OVERRULED. SEE EXHIBIT "D" PAGE 78, RT EXCERPT 53  
 28 LINES 1-21, 24, 25, 27, 28. (CROSS EXAMINATION OF AGENT KIRK BY MR. ADAIR.



WILLIAM BURTON # 2722 IN PROPER  
P.O. BOX 5276 - CHAFFIS, CA 92612  
CORCORAN, CA 92212

1 Q. ARE YOU ALSO A PATROL OFFICER OR-- A. WELL, AT THAT TIME I WAS  
2 ACTUALLY ACTING SERGEANT. Q. AT THE TIME THAT YOU ARRIVED ON THE SCENE,  
3 WAS MR. BURTON HANDCUFFED? A. HE WAS IN THE PROCESS OF BEING HANDCUFFED,  
4 I BELIEVE. Q. SO YOU WERE THERE FAIRLY QUICKLY; CORRECT? A. YES, SIR.  
5 Q. DO YOU REMEMBER A SECOND INDIVIDUAL BEING THERE ON THE SCENE THAT  
6 WAS NOT A POLICE OFFICER? A. YES. Q. AND WHO WAS THAT OTHER  
7 PERSON? A. I DON'T RECALL HIS NAME, BUT THERE WAS ANOTHER  
8 BLACK MALE THERE. Q. WOULD IT BE FAIR TO DESCRIBE HIM AS A  
9 YOUNGER MALE? A. YES. Q. YOUNGER THAN MR. BURTON? A. HE LOOKED TO BE,  
10 YES. Q. DIDN'T YOU ASK THAT INDIVIDUAL, "WHERE IS THE (ALLEGED) GUN?"  
11 Q. AND REFERRING TO THE YOUNGER BLACK MALE? A. CORRECT.  
12 SEE EXHIBIT D, PAGE 79, RT 54, LINES 1, 2, 12-24, SEE ALSO EXHIBIT D,  
13 PAGE 75, RTEXCERPT 50, LINES 9-11, 25, 26, SEE EXHIBIT D, PAGE 76, RTEXCERPT 51, LINES 5-17, 26-28 SEE EXHIBIT D, PAGE 79, RTEXCERPT 54,  
14 EXCERPT 51, LINES 5-17, 26-28 BY MR. ADAIR: Q. DO YOU  
15 REMEMBER THAT YOUNGER INDIVIDUAL STANDING NEAR THE DOORWAY TO THE  
16 APARTMENT? SEE EXHIBIT D, PAGE 74, RTEXCERPT 49, LINES 6-14, SEE ALSO  
17 EXHIBIT D, PAGE 75, RTEXCERPT 50, LINES 9-11, 25, 26. SEE EXHIBIT D, PAGE  
18 76, RTEXCERPT 51, LINES 5-16-26-28, SEE EXHIBIT D, PAGE 77, RTEXCERPT  
19 52, LINES 1, 4-9 SEE EXHIBIT D, PAGE 80, RTEXCERPT 55, LINES 2-28, SEE  
20 EXHIBIT D, PAGE 81, RTEXCERPT 56, LINES 1-14. (BY MS. HANNAH) (AGENT KIRK  
21 RESPONDING) Q. APPROXIMATELY WHERE WERE YOU STANDING IN REFERENCE TO  
22 THE DEFENDANT WHEN YOU HAD THIS EXCHANGE? A. I WAS STANDING PROBABLY  
23 ABOUT FIVE OR SIX FEET AWAY FROM HIM. Q. WHERE WAS THE DEFENDANT  
24 POSITIONED WHEN YOU WERE ASKING THESE QUESTIONS? A. HE WAS STILL  
25 IN THE PARKING LOT. Q. WAS HE STANDING? WAS HE SITTING?  
26 A. I BELIEVE HE WAS SITTING. Q. WHEN YOU WENT INTO THE APARTMENT,  
27 DID YOU FIND ANYTHING? A. YES I DID. Q. DID YOU SEARCH THE REST OF THE  
28

MR. BURTON, THE PROSECUTOR,  
P.O. BOX 5246 - CSATF/SPC-1324  
CORCORAN, CA. 93212

1 APARTMENT? A. YES, I DID. Q. -- DID YOU SEARCH THE DEFENDANT'S VEHICLE?  
2 A. YES, I DID. Q. AND DID YOU FIND ANYTHING INSIDE OF THE VEHICLE?  
3 A. YES, I DID. Q. WAS THE DEFENDANT STILL PRESENT WHEN YOU SEARCHED  
4 THE VEHICLE? A. -- I THINK HE HAD BEEN PLACED IN A VEHICLE.  
5 Q. AGENT KIRK, YOU INDICATED THAT YOU DID SEARCH THE DEFENDANT'S CAR;  
6 CORRECT? A. YES. Q. WHERE SPECIFICALLY INSIDE THE VEHICLE DID  
7 YOU FIND ~~THESE~~ <sup>THESE</sup> THE ITEMS? A. THEY WERE INSIDE -- A BLACK BUCH  
8 INSIDE THE GLOVE BOX. Q. DID YOU ALSO PHOTOGRAPH THESE ITEMS?  
9 A. YES, I DID. Q. AND THEN DID YOU TAKE THESE ITEMS INTO CUSTODY OR  
10 INTO EVIDENCE? A. YES, I DID. MS. HANNAH: THANK YOU. NOTHING FURTHER.  
11 (CROSS EXAMINATION BY MR. ADAIR;) (AGENT KIRK RESPONDING) MR. ADAIR: Q. WOULD  
12 IT BE FAIR TO SAY THAT THERE WERE A NUMBER OF ITEMS OF CLOTHING IN THE  
13 CAR? A. I HAVEN'T REVIEWED THE PICTURE SINCE THE DAY I TOOK THEM, I  
14 CAN'T RECALL. Q. DO YOU REMEMBER FINDING ANY INCENSE IN THE CAR?  
15 A. IN WHAT? Q. INCENSE. INCENSE IS SUCH AS YOU BURN TO PRODUCE  
16 A SMELL, A SCENT? A. I DON'T RECALL FINDING ANYTHING. Q. WAS THERE  
17 ALSO A BACK PACK THERE AT THE SCENE? A. -- I DON'T RECALL  
18 SEEING ONE. Q. DO YOU REMEMBER ANYTHING BEING ON TOP OF THE HONDA  
19 THAT YOU SEARCHED, PAPER, BACK PACK, ANYTHING? A. ON TOP BEING --  
20 Q. ON THE ROOF OF THE CAR. A. I DON'T RECALL Q. DID YOU RECOVER ANY  
21 SUCH ITEMS FROM INSIDE THE CAR? A. RECOVER AND TAKE AS EVIDENCE?  
22 Q. YES. A. I DON'T BELIEVE SO. I COULD REFER BACK TO MY REPORT  
23 TO REFRESH MY MEMORY, Q. COULD YOU TAKE A LOOK AT YOUR REPORT  
24 PLEASE, A. OKAY. Q. DOES THAT REFRESH YOUR MEMORY? A. SOMEWHAT.  
25 Q. HOW WOULD YOU ANSWER THE QUESTION AT THIS TIME THEN? A. I  
26 WOULD HAVE TO SAY I DON'T RECALL TAKING ANYTHING ELSE FROM  
27 A BACK PACK. Q. OKAY. DO YOU KNOW WHERE THE CAR IS NOW? A. THE  
28 LAST TIME I SAW THE CAR IT WAS AT THE TOW YARD. Q. HOW LONG  
29 AGO WAS THAT? A. IT WOULD HAVE BEEN A COUPLE MONTH'S AGO.  
30 MR. ADAIR: NO FURTHER QUESTIONS. THANK YOU, OFFICER. THE WITNESS: THANK YOU  
31 SIR. THE COURT: MISS HANNAH, ANY REDIRECT? MS. HANNAH: JUST BRIEFLY.  
32 SEE EXHIBIT "D" PAGE 85 RT. EXCEPT 735, LINES 12-20, 21, 23, 24, 25-28.  
33 BY MR. TROCHA Q. (AGENT KIRK RESPONDING) THE HYUNDAI THAT YOU PREVIOUSLY DESCRIBED,  
34 WERE YOU ABLE TO DETERMINE WHO IT BELONGED TO? A. YES, I WAS. Q. AND WHO DID  
35 THE BELONG TO? A. MR. BURTON. Q. DID YOU HAVE OCCASION TO SEARCH THIS CAR?  
36 A. YES, I DID.

MR. BURTON #2730 TO PEOPLE  
P.O. BOX 5246 - CSATF/SPC1-132L  
CORCORAN, CA 93212

Q. WHERE DID THIS SEARCH TAKE PLACE? A. RIGHT IN FRONT OF MR. BURTON'S APARTMENT WHERE -- Q. AT THE SCENE A. YES. Q. DURING YOUR SEARCH DID YOU TAKE PHOTOGRAPHS OF THE AREA SEARCHED IN THE CAR? A. YES I DID. Q. DID YOU SEARCH THE GLOVE COMPARTMENT OF THIS - SEE EXHIBIT D, PAGE 86, RTEXCERPT 736, LINES 1, 2, 7-13, 19, 20, 21, 22, 24, 25-28. SEE ALSO EXHIBIT D, PAGE 87, RTEXCERPT 737, LINES 1, 4, <sup>11-25</sup> ~~26, 28~~ <sup>ARTICLES</sup> SEE EXHIBIT D, PAGE 88, RTEXCERPT 738, LINES 1-7, 27, 28. SEE EXHIBIT D, PAGE 89, RTEXCERPT 739, LINES 1-23. SEE EXHIBIT "D", PAGE 90, RTEXCERPT 743, LINES 8-9, 11, 12, 14, 15, 17-28, ALSO SEE EXHIBIT "D" PAGE 91, RTEXCERPT 744, LINES 1-4, 15-18. SEE EXHIBIT "D", PAGE 92, RTEXCERPT 745, LINES 3-10, 15-28. SEE EXHIBIT "D" PAGE 93, RTEXCERPT 746, LINES 1-28. SEE EXHIBIT "D", PAGE 94, RTEXCERPT 747, LINES 1-14. Q. CAR? A. (AGENT KIRK) YES, I DID. Q. WHAT DID YOU FIND INSIDE THAT GLOVE COMPARTMENT? A. INSIDE THE GLOVE COMPARTMENT? Q. YES. A. THE MAIN ITEM THAT I FOUND IN THERE WAS A BLACK ZIPPERED POUCH AND THE CONTENTS THAT WERE WITHIN IT. Q. WHAT DID YOU FIND INSIDE THAT POUCH? A. -- THERE WAS A BLACK DRAW STRING, NYLON-TYPE POUCH INSIDE THE ZIPPERED POUCH. INSIDE THE DRAWSTRING -- ALSO, IDENTIFICATION -- THREE FORMS OF IDENTIFICATION IN THE NAME OF MR. BURTON, AND TWO OF THEM OBTAINED THAT HAD HIS PHOTOGRAPH ON. Q. YOU TOOK PHOTOGRAPHS OF EACH OF THESE ITEMS? A. YES Q. SO FOCUSING YOUR ATTENTION ON TO PEOPLE'S -- (PHOTO OF BLACK NYLON ZIPPERED POUCH, WAS MARKED FOR IDENTIFICATION) -- PHOTO OF CLOSED RED BOX. -- PHOTO OF BLACK NYLON ZIPPERED POUCH, BLACK DRAW-STRING POUCH, AND HEALTH SOURCE ID CARD, WAS MARKED FOR IDENTIFICATION. THE WITNESS: I DO WOULD BE THE BLACK ZIPPERED POUCH CONTAINING THE ITEMS I PREVIOUSLY DESCRIBED. BY MR. TROCHA: Q. AND THE OTHER FIVE EXHIBITS ARE WHAT WAS FOUND INSIDE THIS POUCH? A. YES. <sup>END PAGE</sup> Q. IN ADDITION, THIS IS THE ~~BLACK LEATH~~ Q. PHOTO OF HEALTH SOURCE ID CARD, WAS MARKED FOR IDENTIFICATION.) THE WITNESS: THOSE ARE THE TWO FORMS OF THE IDENTIFICATION I FOUND INSIDE THE NYLON POUCH. Q. AND THE REST OF THESE ARE THE PHOTOS OF THE POUCH ITSELF AND WHAT WAS FOUND INSIDE THE POUCH, CORRECT A. YES, SIR. Q. YOU SEIZED THE ITEMS DEPICTED IN, C, D, E, F, G AND H INTO EVIDENCE? A. YES I DID. Q. SHOWING YOU NOW WHAT'S BEEN MARKED AS PEOPLE'S 152 (PEOPLE'S EXHIBIT 152, BLACK NYLON ZIPPERED POUCH, WAS MARKED FOR IDENTIFICATION.)

IN RE: ERIC BURTON # 2730 IN PROPER  
P.O. BOX 5246 - CSATFISP CI. 132L  
CORCORAN, CA. 93212

BY MR. TROCHA: Q. DO YOU RECOGNIZE PEOPLE'S 152? A. YES, # 40.  
Q. AND WHAT IS IT? A. IT'S THE BLACK ZIPPERED NYLON POUCH  
THAT WAS INSIDE THE GLOVE BOX. Q. ASIDE FROM THE FACT  
THAT IT'S NOW EMPTY, DOES IT APPEAR TO YOU IN THE SAME CONDITION  
THAT IT APPEARED ON THE DAY YOU SEIZED IT? A. YES, IT DOES.  
Q. "I NOTE THERE'S A LOCK ON THE POUCH, CORRECT?"  
A. THAT'S CORRECT. Q. "WAS THAT LOCK THERE WHEN YOU FIRST  
FOUND IT? A. YES IT WAS. Q. FINALLY, SHOWING YOU WHAT'S  
BEEN MARKED AS PEOPLE'S 160, AND 161, 160 REFERRING TO THE POUCH,  
(PEOPLE'S EXHIBIT 160, BLACK DRAWSTRING POUCH, WAS MARKED FOR  
IDENTIFICATION.). BY MR. TROCHA: Q. CAN YOU DESCRIBE WHAT IS  
CONTAINED WITHIN THAT EXHIBIT? A. THAT'S THE BLACK DRAWSTRING  
POUCH AND AMMUNITION THAT WAS LOCATED INSIDE THE PREVIOUS  
EXHIBIT, THE (LOCKED) ZIPPERED POUCH. Q. REFERRING TO PEOPLE'S 152?  
A. THAT'S CORRECT. Q. NOW IN THAT EXHIBIT-- WHEN YOU FOUND THOSE  
ITEM'S IN PEOPLE'S 152, WHERE WERE BOTH EXHIBITS IN RELATION  
TO EACH OTHER? A. THE ROUNDS WERE INSIDE OF THE DRAW STRING  
POUCH. Q. AND THE DRAW STRING POUCH WAS INSIDE THE (LOCKED)  
ZIPPERED POUCH? A. THAT'S CORRECT. Q. WITHIN THAT POUCH?  
A. YES. Q. HOW MANY ROUNDS WERE CONTAINED A. 40 Q. THANK YOU  
OFFICER, YOU ALSO NOTED THAT YOU FOUND SOME FORMS OF  
IDENTIFICATION TO AN INDIVIDUAL BY THE NAME OF <sup>ALLEGED</sup> ERIC BURTON?  
A. YES, I DID. Q. WHERE EXACTLY DID YOU FIND THESE IN RELATION  
TO THE (LOCKED) BLACK ZIPPERED POUCH? A. THEY WERE IN THE  
DRAW STRING POUCH, CLUB SYCUAN CARD WAS MARKED FOR IDENTIFICATION,  
HEALTH SOURCE ID CARD WAS MARKED FOR <sup>ALLEGED</sup> IDENTIFICATION.) Q. DO YOU  
RECOGNIZE THESE THREE ITEMS? A. YES, I DO. Q. WHAT IS THAT  
ITEM? A. IT'S A SYCUAN CASINO AND RESORT CLUB MEMBER CARD IN THE  
(ALLEGED) NAME OF ERIC BURTON. Q. HAVE YOU SEEN ONE OF THOSE  
BEFORE? A. YES, I HAVE.



WAREHOUSE 2733 FURNACE  
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(EXHIBIT D, PAGE 93, RTEXCERPT 746 LINES 1-28) (Q. BY MR. TROCHA A. BY AGENT KIRK) Q. DOES THIS APPEAR TO BE SOMETHING THAT YOU WOULD GET FROM SYCUAN CASINO? A. YES, IT IS. Q. AND IT HAS (ALLEGEDLY) MR. BURTON'S NAME UPON IT? A. YES. IT DOES Q. FOCUSING YOUR ATTENTION ON TO PEOPLE'S 154. A. YES. Q. WHAT IS PEOPLE'S 154? A. IT'S A HEALTH SOURCE (EXPIRED) (ALLEGED) HEALTH SOURCE ID WITH THE NAME OF ERIC BURTON, CNA, AND A (ALLEGED) PHOTO OF MR. BURTON Q. NOW PEOPLE'S 162 NOW, A. IT'S A HEALTH SOURCE ID WITH THE (ALLEGED) NAME OF ERIC BURTON, CNA, AND THE (ALLEGED) PHOTO OF MR. BURTON, Q. AND THESE THREE THINGS WERE FOUND WITH THE BULLETS, THE BOX OF BULLETS, AND THE BLACK POUCH INSIDE THE (LOCKED) BLACK ZIPPERED POUCH? A. THAT'S CORRECT. Q. IN SEARCHING THE CAR DID YOU FIND ANY EMPTY SHELL CASINGS? A. NO I DID NOT. Q. SPECIFICALLY, DID YOU SEARCH THE AREA OF THE DRIVER'S SIDE, PULLED THE SEAT, THE FLOOR BOARDS, AND POPPED THE DOOR POCKET? A. YES I DID. Q. DID YOU FIND ANY EMPTY SHELL CASINGS IN THAT AREA? A. NO, I DID NOT. Q. THANK YOU OFFICER. MR. TROCHA: NOTHING FURTHER. THE COURT: CROSS EXAM? MR. ADAIR: YES, YOUR HONOR. BY MR. ADAIR: Q. OFFICER, GOOD MORNING A. GOOD MORNING SIR. Q. OFFICER, YOU INDICATED THAT YOU SEARCHED THE HYUNDAI. AND IN ADDITION TO THE SEARCH, YOU TOOK PHOTO GRAPHS, CORRECT. Q. AND THERE WERE ADDITIONAL ITEMS IN THE CAR OTHER THAN JUST THE ONES THAT YOU DESCRIBED, CORRECT? A. THERE WERE ITEMS IN THE CAR, YES, SEE EXHIBIT "D", PAGE 65, RTEXCERPT 714 LINES 18-28, SEE ALSO EXHIBIT "D", PAGE 66, RTEXCERPT 716, LINES 6-25, SEE EXHIBIT "D", PAGE 67, RTEXCERPT 717, LINES 5-13, SEE ALSO EXHIBIT "D", PAGE 64, RTEXCERPT 713, LINES 5-15, 17-19. MR. TROCHA: Q. WERE YOU ON DUTY BACK ON MARCH 19TH OF LAST YEAR? (OFFICER HOLMES) A. YES, I WAS. Q. DID YOU RECEIVE A CALL TO REPORT TO AN ADDRESS ON 425 EAST MAIN STREET? A. YES I DID. Q. AND THAT'S, OF COURSE, WITHIN THE COUNTY OF SAN DIEGO? A. YES Q. WERE YOU ABLE TO ASSOCIATE-- WHAT TYPE OF STRUCTURES, IF ANY, ARE AT THIS ADDRESS? A. IT'S AN APARTMENT BUILDING. Q. WERE THERE ANY VEHICLES IN THE PARKING LOT? A. YES. THERE WERE. Q. WERE YOU ABLE TO IDENTIFY ONE THAT BELONGED TO MR. BURTON? A. YES I DID. Q. AND WHAT TYPE OF VEHICLE WAS THAT? A. --THE MODEL ESCAPES ME AT THIS POINT IN

MAE W. BURTON #720 T-2004  
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TIME. Q. WERE THERE ANY ITEMS IN OR AROUND THE VEHICLE THAT YOU ALSO LATER SEIZED? A. YES. Q. WHAT WERE THOSE ITEMS? A. THERE WAS PAPERWORK ON TOP OF A BLACK BACK PACK--AND I COLLECTED THAT. Q. -- DID YOU PLACE MR. BURTON UNDER ARREST? A. I DID. Q. WAS HE TRANSPORTED TO THE EL CAJON POLICE DEPARTMENT THEN? A. YES. Q. AT THE EL CAJON POLICE DEPARTMENT, DID YOU HAVE THE OPPORTUNITY TO SEIZE AND IMPOUND HIS CLOTHING? A. YES, I DID.

Q. (EXHIBIT "D" PAGE 64, RTEXCERPT 713, LINES 5-7, 11-15, 17-19) AND HOW WOULD YOU GO ABOUT DOING SOMETHING LIKE THAT? A. THEN WE WOULD HAVE THE PERSON REMOVE EACH ITEM OF CLOTHING SEPARATELY,-- AND AFTER ALL THE CLOTHING IS COLLECTED, WE ISSUE THEM A PAPER SUIT, WHICH THEY WOULD THEN WEAR.

Q. IS THIS A STANDARD PROCEDURE IN EVERY TYPE OF CASE? A. -- NO. SEE EXHIBIT "B", PAGE 77, RTEXCERPT 554, LINE 28, SEE ALSO EXHIBIT "B", PAGE 87, RTEXCERPT 555, LINES 1, 3, 4, 5, 10, 12, 19, 20, 27, 28. SEE EXHIBIT "B", PAGE 78, RTEXCERPT 556, LINES 1-10, 26, 27. SEE EXHIBIT "B", PAGE 79, RTEXCERPT 557, LINES 3-11, 27, 28. SEE ALSO EXHIBIT "B", PAGE 80, RTEXCERPT 558, LINES 1-5, 8, 9, 15, 17-27. SEE EXHIBIT "B", PAGE 81, RTEXCERPT 559, LINES 6-8, 29, 21, 23, 27, 28. SEE EXHIBIT "B", PAGE 82, RTEXCERPT 560, LINES 1, 2, 4, 5, 11, 12, 19, 21, 22, 23-28. SEE EXHIBIT "B", PAGE 83, RTEXCERPT 563, LINES 7-9, 15, 16. SEE EXHIBIT "B", PAGE 84, RTEXCERPT 564, LINES 26-28. SEE EXHIBIT "B", PAGE 85, RTEXCERPT 565, LINES 1-25. SEE EXHIBIT "B", PAGE 86, RTEXCERPT 566, LINES 2, 4, 5, 6, 7, 9-17, 23, 27, 28. > BY MR. TROCHA, (EXAMINATION OF ALLEGED EYE WITNESS TO AN EVENT ON THE DAY IN QUESTION. SHANE COLBERT) Q. GOING BACK TO MARCH OF 2004, MARCH 19TH SPECIFICALLY A. IT'S 389 (MEN ADDRESS WHERE THE ALLEGED INCIDENT OCCURED)

Q. YOU WERE LIVING AT 389 AT THAT TIME? A. YES Q. SO IF I WAS DIRECTLY IN FRONT OF-- A. TO THE RIGHT. Q. DID YOU HEAR OR WITNESS SOMETHING UNUSUAL? A. WELL, I HEARD PEOPLE Q. ABOUT HOW FAR AWAY WERE YOU WHEN YOU FIRST HEARD THE VOICES? A. ABOUT 15 FEET ABOUT. ABOUT 15, 20 FEET. Q. AND WHAT KIND OF VOICES DID YOU HEAR? A. I HEARD ARGUMENT, I HEARD TWO GUYS ARGUING. Q. SO THEY WERE MALE VOICES? A. YES. Q. COULD YOU HEAR ANY WORDS THAT WERE BEING EXCHANGED? A. NO, NOT REALLY. Q. COULD YOU SEE WHO WAS ARGUING AT THAT TIME? A. NO

MR. C.W. BURTON 62720  
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Q. ABOUT HOW MANY POPS DID YOU HEAR? A. ABOUT FOUR. Q. COULD YOU SEE WHAT WAS HAPPENING AT THAT TIME? A. NOT REALLY BECAUSE THE CAR WAS BLOCKING MY VIEW. Q. WHAT COULD YOU SEE? A. -- AND THEN BLOOD WAS LIKE EVERYWHERE. Q. THE GUY THAT HAD FALLEN, COULD YOU DESCRIBE HOW HE LOOKED? A. NO. Q. COULD YOU SEE ANYONE INSIDE THE "JETTA"? A. "I SAW ONE PERSON. Q. COULD YOU GENERALLY DESCRIBE THAT PERSON. A. HE WAS BLACK -- HE LOOKED LIKE 20. Q. HE LOOKED YOUNG TO YOU? A. YES.

Q. WHAT HAPPENED AFTER YOU HEARD THESE SOUNDS?

A. I STOPPED AND FROZE. Q. HOW FAR AWAY WAS HE FROM THE CAR THAT YOU DESCRIBED? A. -- ABOUT 5 FEET, SOMETHING LIKE THAT. Q. THE DISTANCE BETWEEN -- YOU CAN USE DISTANCES HERE IN THE COURTROOM. A. ABOUT HALF WAY FROM ME TO YOU. Q. SO ABOUT -- A. ABOUT RIGHT THERE. Q. OKAY, THE COURT: YOU WANT THE RECORD TO REFLECT AN "ESTIMATE" OF THAT DISTANCE? MR. TROCHA: ABOUT 8 TO 10 FEET. BY MR. TROCHA, YOU SAID THIS PERSON WAS BLEEDING? A. YES. Q. DID YOU SEE HIM MOVE FROM THAT POSITION AT ANY TIME? A. YEAH. Q. DID YOU EVER SEE HIM JUMP OVER THE WALL OR DO ANYTHING OF THAT NATURE? A. "NO". Q. WHEN HE RAN -- A. HE WAS, LIKE, STUMBLING ALONG. Q. HOW LONG THIS ENTIRE EVENT LAST? A. NO LONGER THAN FIVE MINUTES. Q. SO YOU STAYED AND WATCHED THIS FOR THE ENTIRE -- A. YES. Q. -- DID YOU SEE THE CAR MOVE AT ALL? A. -- IT WAS JUST DEAD -- STOPPED ON THE STREET. Q. YOU SAID YOU HEARD YELLING, BUT YOU COULDN'T MAKE OUT ANY WORDS? A. YES. Q. AND YOU REMEMBER A CAR BEING IN THE STREET, CORRECT? A. YES. Q. -- AND YOU HEARD THIS ARGUMENT? A. YES. Q. (BY MR. ADAIR?)

Q. BUT YOU DID SEE HIM 8 OR 10 FEET AWAY FROM THE CAR? A. YES, HE WAS STANDING STRAIGHT UP AT THE TIME. Q. OKAY, AND DO YOU REMEMBER ANYTHING ABOUT A TELEPHONE? A. NO. Q. OKAY. BUT YOU DID HEAR ARGUING? A. YES. Q. THANK YOU. THE COURT: ARE YOU DONE? MR. ADAIR: IF I COULD HAVE JUST A MOMENT YOUR HONOR? THE COURT: SURE. BY MR. ADAIR: Q. WHEN YOU SAW THIS PERSON RIGHT AFTER HE HAD -- DID YOU SEE A LITTLE GIRL NEAR HIM? A. NO. Q. DID YOU LATER SEE A LITTLE GIRL? A. NO. Q. OKAY. SO -- THANK YOU. MR. ADAIR: I HAVE NO FURTHER QUESTIONS. THE COURT: REDIRECT? MR. TROCHA: BRIEFLY. BY MR. TROCHA:



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Q. MR. COLBERT, -- WHERE WAS IT IN THE STREET EXACTLY?

A. IT WAS LIKE "RIGHT IN THE MIDDLE. Q. NOW THERE'S TWO SIDE WALKS. -- WHICH OF THOSE SIDE WALKS WAS HE ON? A. -- THE ONE ON THE STREET. Q. -- STREET SIDE OF IT?

A. THE STREET SIDE. Q. DID YOU SEE IF HE HAD ANYTHING IN HIS HAND? A. NO. Q. WHEN I SAY THAT, DID YOU SEE HIS HANDS?

A. NO. Q. YOU SAID YOU HEARD TWO VOICES? A. YES. MR. TROCHA: YOUR HONOR, NOTHING FURTHER. THE COURT: ALL RIGHT.

SEE EXHIBIT B, PAGE 43, RTEXCERPT 169, LINES, 3, 4, 7-15, 17, 28. 7 MR. ADAIR: AND OUR OBJECTION IS BASED OR -- OUR MOTION IS BASED UPON THE FACT THAT THERE ARE SOME -- THAT THERE WOULD ALSO HAVE BEEN BLOOD ON THE GRASS AND ON THE SIDEWALK, AND THAT WAS NOT PRESERVED. AND THAT APPARENTLY ONE OF THE -- HOSED OFF THE AREA. THEREFORE, -- AND DEFENSE HAD NO OPPORTUNITY TO GET THAT TYPE OF EVIDENCE. THE COURT: ALL RIGHT. LET ME HEAR FROM MS. HANNAH ON THAT ISSUE. MS. HANNAH: IT'S THE PEOPLE'S POSITION, YOUR HONOR, THAT -- THE STREET WHERE THE DEFENDANT WAS ALLEGED -- EVIDENCE.

I'M NOT SURE WHERE THIS -- SEE EXHIBIT B, PAGE 37, RTEXCERPT 663, LINES 9-26. ALSO SEE EXHIBIT "B", PAGE 38, RTEXCERPT 665, LINES 2-5, 8-12, SEE EXHIBIT "B", PAGE 35, RTEXCERPT 624, LINES 1-69, 10, 11, 21, 22, 23, 24, 28, SEE ALSO EXHIBIT B, PAGE 36, RTEXCERPT 625, LINES 1-11, 13, 28. 7 BY MR. ADAIR: (AGENT BENNETT RESPONDING?) Q.

AND REFERRING TO PICTURE A ON THIS PARTICULAR EXHIBIT, IT DOES SHOW A SECTION LINE, CORRECT? A. YES, IT DOES. Q. AND I BELIEVE THAT YOU INDICATED YESTERDAY THAT ON THAT LAWN SOMEWHERE, YOU RECOVERED A PORTION OF A CORDLESS PHONE, CORRECT?

A. "I DIDN'T RECOVER IT. I PHOTOGRAPHED IT AND DOCUMENTED IT'S LOCATION. Q. OKAY. AND APPARENTLY PEOPLE'S EXHIBIT 128 -- THIS THE PORTION OF THE PHONE THAT YOU

PHOTOGRAPHED? A. YES. Q. DO YOU SEE THE LOCATION ON PHOTO A WHERE THIS PIECE OF PHONE WAS FOUND? A. (INDICATING). Q. OKAY. THAT'S THE PIECE. AND I THINK YOU STATED YESTERDAY THAT THERE WERE A COUPLE OF OTHER SMALLER PIECES NEXT TO IT?

A. YES. Q. AND LET ME GET A MARKER SO WE CAN CIRCLE THAT.



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Q. AND I BELIEVE YOU ALSO INDICATED THAT WHEN YOU LOOKED AT THE LAWN WHEN YOU FIRST ARRIVED THERE AT THE SCENE, IT APPEARED TO BE WET? A. IT DID. Q. ~~AND BECAUSE OF ENVIRONMENTAL~~

~~ENVIRONMENTAL~~ THE FACT THAT ANY BLOOD ON THE GRASS ITSELF? A. CORRECT.

Q. -- IT HAD BEEN BASICALLY WASHED AWAY AT THAT POINT? A. YES.

SEE EXHIBIT "G", PAGE 7, RT EXCERPT 1213, LINES 2, 3, 13, 14, 20, 21, 22, -28, ALSO SEE EXHIBIT G, PAGE 8, RT EXCERPT 1214, LINES 1-22, 26-28.

7 MR. TROCHA: THE PROBLEM I HAVE IS THAT IT IMPLIES SELF-DEFENSE. -- WITH A PERSON STANDING THEIR GROUND FOR SELF-DEFENSE.

THE COURT: WELL, THE PROBLEM IS THEY'RE VIEWING ALL THE EVIDENCE AS IT APPLIES BOTH TO THE -- I'LL DO THE CONCLUDING INSTRUCTIONS AND THEN RECESS. MR. ADAIR: PROBABLY FOR THE RECORD, I SHOULD BRING A MOTION FOR A MISTRIAL, THE COURT:

MOTION'S DENIED ALSO, THE RECORD SHOULD REFLECT THAT "BEFORE" STARTING HIS ARGUMENT, MR. ADAIR WANTED TO

UNSEAL THE EXHIBIT, WHICH IS THE TELEPHONE. AND I DENIED THAT REQUEST. I FEEL, NUMBER ONE, IT'S SEALED

FOR A REASON AND IT HAS CONTAMINANT ON IT, "INCLUDING BLOOD" (NEWLY DISCOVERED SUPPRESSED, DEFENSE REQUESTED

PURSUANT TO BRADY V. MARYLAND VIA DISCOVERY MOTION FILED AND SERVED ON PROSECUTION APPROX. 7-6-04, AND ON OR ABOUT 7-30-04,

WITH NO RESPONSE, TAKEN OFF CALENDAR.) AND THE "JURY" -- IT'S A CLEAR PLASTIC BAG. THEY CAN SEE VERY CLEARLY WHAT IT

IS. AND DEMONSTRATING IT'S USE, I THINK, MR. ADAIR HAS VERY EASILY MADE HIS POINT, AND THE JURY CAN EXAMINE THE (FALSE

EVIDENCE) THE PHONE IN THE JURY ROOM THROUGH THE BAG.

MR. ADAIR: I WAS CONCERNED ABOUT HOW I WAS GOING TO SNEAK OFF TO THE BATHROOM AND THOROUGHLY WASH MY HANDS. THE COURT: SO NOW YOU DON'T HAVE TO. LET'S FINISH THE INSTRUCTIONS AND

THEN WE'LL GET THE JURY OUT. (THE COURT, BOTH COUNSEL, AND THE COURT REPORTER ENTER THE COURTROOM) (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT IN THE PRESENCE OF THE

JURY:) THE COURT: ALL RIGHT LADIES AND GENTLEMEN, I HAVE A FEW CONCLUDING INSTRUCTIONS FOR YOU AND THEN YOU WILL BE

SENT OUT TO THE JURY ROOM FOR DELIBERATIONS.

MAEW BUSTON #2720 EX PROPE  
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SEE EXHIBIT B, PAGE 34, RT EXCERPT 170, LINES 1, 5-11, 20-23, 27, SEE ALSO, EXHIBIT B, PAGE 33, RT EXCERPT 322, LINES 4-21, 23, 24, 26, 27, 28. > MS. HANNA? -- COUNSEL IS REFERRING TO IN TERMS OF ADDITIONAL BLOOD EVIDENCE. THE COURT: (APPROX 24 MARCH 05) ALL RIGHT. THANK YOU. ARE THERE ANY PARTICULAR AREAS OF THE SCENE THAT -- OR IS IT THAT YOU'RE ASKING OR ARE YOU ARGUING THAT WHATEVER BLOOD WAS PRESENT, SHOULD HAVE BEEN PRESERVED MR. ADAIR? -- BLOOD ON THE GRASS ON THE SIDEWALK AND ON THE STREET, -- FROM WHAT I JUST SAID, THE COURT: ALL RIGHT. I'M LOOKING AT THE DIAGRAM. IT APPEARS TO HAVE BEEN PREPARED ON MARCH 19TH '04, -- LODGED INTO EVIDENCE ON THAT DATE. -- BASED UPON WHAT I'VE BEEN TOLD -- DIAGRAM SHOWS PROPPINGS OF BLOOD IN VARIOUS LOCATIONS. MR. ADAIR: COULD I HAVE JUST A MOMENT, YOUR HONOR? THE COURT: YOU MAY. (COUNSEL AND THE DEFENDANT CONFER.) MR. ADAIR: I GUESS THERE'S ANOTHER ISSUE UNDER TROM BETTA, YOUR HONOR, THAT THERE WAS -- THAT THE EL CAJON POLICE DEPARTMENT DIDN'T PROPERLY SECURE THE (ALLEGED) CRIME SCENE, AND THAT THERE WAS AN AREA OF THE (ALLEGED) CRIME SCENE THAT WAS HOSED DOWN BY EITHER THE POLICE DEPARTMENT OR ONE OF THE RESIDENCE RESULTING IN THE DESTRUCTION OF VALUABLE EVIDENCE. THE COURT: -- TIME -- IT SOUNDS -- IN MARCH. MR. ADAIR: (ATTNAL) AND I'M NOT SURE IF IT WAS RULED ON AT THE TIME THOUGH. THE COURT: I REMEMBER SEEING CHARTS AND EXPLANATIONS ABOUT THE SCENE AND SOME MAPPING OF -- WAS -- SO LET ME JUST LOOK HERE, -- AND I THINK THE TRAIL OF (ALLEGED) BLOOD WAS CONNECTED TO THE ISSUE OF HOSING DOWN THE STREET. SEE EXHIBIT B, PAGE 35, RT EXCERPT 624, LINES 1-7, 9-11, 21-24, 28. SEE ALSO EXHIBIT B, PAGE 36, RT EXCERPT 625, LINES 1-11, 13, 28. BY MR. ADAIR?: (AGENT BENNETT RESPONDING?) Q. HOW DID YOU DETERMINE THIS WAS A BLOOD TRAIL? (ALLEGED) A. THERE WERE SPOTS OF BLOOD THAT I FOLLOWED FROM THE AREA WHERE THE BLOOD WAS ON THE "CAR" (SUPPRESSED NEWLY DISCOVERED EVIDENCE) UP TO THE WALKWAY WHERE IT TURNS AND GOES TO THE FRONT OF 324A. (ALLEGED RESIDENCE OF CONVICTED FELONY KIAH MINCEY DEPARTED BY THE PROSECUTION) AND I FOLLOWED THAT TO WHERE I FOUND THE

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(ALLEGED) BLOODY T-SHIRT PIECES. Q. -- WAS THERE ANY WITNESS AT ALL ON THIS WALKWAY? A. THERE WAS. Q. YOU ALSO PHOTOGRAPHED THIS (ALLEGED) BLOOD TRAIL? A. I DID. Q. WHERE DID THIS BLOOD TRAIL END? A. IT (ALLEGEDLY) ENDED INSIDE OF 324A. Q. WHAT DID YOU FIND AT THE END OF THE (ALLEGED) BLOOD TRAIL? A. "A PHONE. Q. -- IF ANYTHING? A. "A PHONE". Q. WAS THIS TELEPHONE DAMAGED IN ANY WAY? A. IT APPEARED TO HAVE BEEN DROPPED, BUT IT WASN'T DAMAGED LIKE THE ONE THAT WAS "FOUND IN THE GRASS AREA". Q. WHAT COLOR WAS THE PHONE? A. BLACK.  
STATEMENT OF RELEVANT FACTUAL BACKGROUND.

AS EVIDENCED BY THE NOTED EXCERPTS PREVIOUSLY AND PRESENTLY IN THE LAST PAGES GIVE LIGHT TO THE FACT THAT PROSECUTION AND THE TRIAL COURT ENGAGED IN MISCONDUCT BY USING FALSE EVIDENCE OF A BLACK PHONE, THAT COUNSEL AND DEFENDANT WERENT ALLOWED TO EXAMINE, AS THE ALLEGED VICTIM MR. THOMAS TESTIFIED TO BEING ALLEGEDLY SHOT IN THE HAND VIA THROUGH AN ALLEGED TELEPHONE THAT WAS POSSIBLY THE PHONE POLICE AGENT BENNETT PHOTOGRAPHED BUT FAILED TO COLLECT AS EVIDENCE AND INSTEAD THE COURT AND PROSECUTOR USED FALSE EVIDENCE OF A BLOODY BLACK PHONE WITH THE NEWLY DISCOVERED, AND SUPPRESSED BLOOD EVIDENCE, PREJUDICIALLY AS EVIDENCE PRETRIALED REQUESTED BY THE DEFENCE THUS VIOLATING PETITIONERS 14TH U.S. CONST FEDERALLY GUARANTEED DUE PROCESS AND EQUAL PROTECTION RIGHTS. THE FAILURE TO DISCLOSE ALLEGED VICTIM ARIAH MINCEY WITHOUT NOTICE OF THE RESULT OF AN ALLEGED VICTIM, ALSO VIOLATED FEDERALLY GUARANTEED FUNDAMENTAL FAIRNESS, AND 14TH AMENDMENT DUE PROCESS RIGHTS, ADDITIONALLY THE SUPPRESSION OF THE VEHICLE WITH ALLEGED BLOOD ON IT, DEFENDANT HAD ASKED PRETRIAL TO TEST ALLEGED BLOOD SAMPLES FORENSICALLY BUT WAS DENIED. THIS DENIED PETITIONER OF HIS RIGHT, FEDERALLY GUARANTEED TO MAKE A DEFENSE, ~~SEE NOW TESTIMONY OF MR. HELSEL AT TIME OF PETITIONERS~~ UNCONSTITUTIONAL ARREST, ~~EWOL~~ - AS WELL AS VIOLATION OF HIS FEDERALLY GUARANTEED 14TH AMENDMENT DUE PROCESS AND EQUAL PROTECTION CLAUSES.

SO



MR. W. BURTON AFO 2720 IN PROPER  
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SEE EXHIBIT B, PAGE 30, RT EXCERPT 681, LINES 25-28 AND ENCL 7-8  
 9-28, SEE ALSO EXHIBIT "B," PAGE 31, RT EXCERPT 682, LINES 7, 8, 10,  
 1-7, 10, 11, 12, 13, 14, 15-23, 27-28. > THE COURT: ALL RIGHT, THE  
 MEMBERS OF THE PANEL HAVE LEFT THE COURTROOM. MR. TROCHA,  
 WHEN YOU HAD SUBMITTED YOUR MOTION ON EXCLUDING DEFENDANT'S  
 (ALLEGED) STATEMENTS, YOU GAVE ME A COPY OF THE TRANSCRIPT.  
 MR. TROCHA: YES, THE COURT; THERE ALREADY WAS ONE IN THE  
 FILE SO I'M GOING TO RETURN THIS ONE TO YOU. IF AT ANY POINT  
 WE NEED TO DEAL WITH IT FURTHER, YOU CAN VERIFY THAT IT'S  
 THE SAME VERSION. MR. TROCHA: THANK YOU, YOUR HONOR. THE COURT:  
 ALL RIGHT, THEN WE'LL BE IN RECESS FOR 15 MINUTES. THANK YOU.  
 (RECESS FROM 10:19 AM, TO 10:35 P.M.) (THE FOLLOWING  
 PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE  
 OF THE JURY.) THE COURT: GO AHEAD MR. ADAIR: JUST SINCE  
 TESTIMONY CONCERNING THE (ALLEGED) BLOOD HAS NOW COME IN  
 PROBABLY PRETTY MUCH AS MUCH AS IT'S GOING TO, WE'D LIKE TO  
 RENEW THE MOTION CONCERNING THE REQUEST TO DISMISS  
 BASED UPON THE VIOLATION OF MR. BURTON'S DUE PROCESS RIGHTS  
 IN THE DESTRUCTION OF THE EVIDENCE -- ON THE GRASS, IT HAD  
 BEEN WASHED AWAY. WE BROUGHT THE MOTION PRETRIAL. IT'S JUST  
 THAT WE'RE RENEWING IT AGAIN AT THIS TIME BASED UPON THE  
 ADDITIONAL EVIDENCE THAT'S COME IN. THE COURT: ALL RIGHT  
 WELL AT THIS POINT -- IT APPEARS THE ONLY TESTIMONY THAT  
 WAS HEARD WAS THAT IT WAS A PERSON LIVING -- IN FACT, THAT'S  
 WHY THE GRASS WAS WET. -- THE MOTION IS DENIED. MR. TROCHA:  
 AND YOUR HONOR, JUST FOR THE RECORD, -- SPRAYED THE GRASS DOWN.  
 THE COURT: IT'S WET. MR. TROCHA: OKAY. THE COURT: ALL RIGHT, --  
 TESTIMONY IS THAT SOMEONE SPRAYED THE PORCH AT SOME POINT  
 IN TIME, THE COURT: ALL RIGHT. ANYTHING FURTHER? MR. TROCHA: NO.  
 THE COURT: LET'S BRING THE JURY IN. SEE EXHIBIT "B," PAGE 32, RT-  
 EXCERPT 176 (DNOR ABOUT 3-24-05) LINES 2-7, 9, 10-19, 23, 26-28. >  
 MS HANNAH: THERE WERE NO PHOTOGRAPHS. THE COURT: AND I TAKE IT  
 THE PEOPLE DON'T HAVE ANY? MS. HANNAH: WE DO NOT. THE COURT:  
 ALL RIGHT, WELL, DISCOVERY AS TO THE PEOPLE, IF THEY DON'T  
 HAVE IT, THEY CAN'T PRODUCE IT. -- PHOTOGRAPHS. -- AT LEAST



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INFORMALLY TO THE PROSECUTOR, THERE ARE NONE, SO YOU CAN'T ORDER PRODUCTION OF SOMETHING THAT DOESN'T EXIST. ANYTHING ELSE BEFORE WE DEAL WITH THE MARSDEN MOTION? MR. ADAIR: THERE IS ONE ADDITIONAL THING, YOUR HONOR. THE-- DURING THIS PROCEEDING-- AND I NOTICED IT EARLIER, BUT I THINK THIS IS THE APPROPRIATE TIME TO BRING IN THE OBJECTION-- A REQUEST AND AN OBJECTION. ALL ALONG WE'VE BEEN REFERRING TO MR. THOMAS AS THE VICTIM, WHICH PRESUPPOSES THAT SOMEONE COMMITTED A CRIME ON HIM (ALLEGED CRIME)-- SO IT'S OUR REQUEST TO NOT USE THE TERM "VICTIM"-- COURTROOM-- AGAIN, IT'S OUR REQUEST THAT MR. THOMAS BE REFERRED TO BY HIS PROPER NAME AND THAT WE NO LONGER USE THE TERM (ALLEGED) "VICTIM." SEE EXHIBIT "B," PAGE 1, RTEXCERPT 177, LINES 1-7, 14-16. THE COURT: ALL RIGHT. ANY RESPONSE BY THE PEOPLE? MS. HANNAH:-- CIRCUMSTANCES AND THE RESULT OF THE INCIDENT THAT OCCURED ON MARCH 19TH OF LAST YEAR. WHETHER THE ISSUE-- THE WHOLE QUESTION OF THE TRIAL IS "WHETHER MR. BURTON IS THE PERSON THAT COMMITTED THE (ALLEGED) CRIME, NOT WHETHER OR NOT MR. THOMAS IS, IN FACT, A (ALLEGED) VICTIM OF A CRIME. MS. HANNAH:-- BUT THE PEOPLE CAN CERTAINLY REFER TO MR. THOMAS AS MR. THOMAS THE COURT: ALL RIGHT. SEE EXHIBIT "B," PAGE 2, RTEXCERPT 719, LINES 21-23. MR. TROCHA: WE HAVE EVIDENCE THAT THE DEFENSE HAS BROUGHT OUT, AND IS GOING TO BRING OUT FURTHER IN THEIR CASE IN CHIEF, THAT "MR. THOMAS IS, IN FACT, THE AGGRESSOR". SEE EXHIBIT B, PAGE 3, RTEXCERPT 720, LINES 26, AND 27. > THE COURT: SO IF THE DEFENDANT WERE TO TESTIFY HE DIDN'T SHOOT ANYONE, (ALLEGED). SEE EXHIBIT "A" PAGE 75, RTEXCERPT 265, LINES 9, 10, 12, 20-22 > THE DEFENDANT:-- MY POINT IS, (6-01-05) (HON. JUDGE SUPERVISOR EXARHOS PRESIDING) YOUR HONOR, THAT I'M INNOCENT OF ALL CHARGES. THE COURT: OKAY FINE. NOW STOP.-- YOU HAVE CHOSEN TO PLEAD NOT GUILTY AND MAINTAIN YOUR INNOCENCE. SO YOU HAVE THE ABSOLUTE RIGHT TO DO SO. SEE EXHIBIT "A" PAGE 35, RTEXCERPT 199 (3-16-05) LINES 4, 5, 8, 9, 11, 12, 25-26, SEE ALSO EXHIBIT A, PAGE 36, RTEXCERPT 200, LINES 1, 2, 5, 6, 7, 11, 13, 13.

MR. E. W. BURTON #A02720 UNPROF  
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1 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 2 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 3 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 4 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 5 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 6 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 7 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 8 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 9 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 10 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 11 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 12 ~~THE COURT: I'VE BEEN DENIED OF MY RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT~~ *Enrol*  
 13 21-28, SEE ALSO EXHIBIT "A" PAGE 112, RTEXCERPT 815, LINES 1-12, 16, 17, 18,  
 14 PAGE 114, RTEXCERPT 817, LINES 1, 2, 4-18, 20, 21, 25-28, SEE EXHIBIT "A" PAGE  
 15 115, RTEXCERPT 818, LINES 5, 10-16, 20-26. 7 EL CAJON, CALIFORNIA; MONDAY,  
 16 7/25/05; 9:18 A.M. (THE FOLLOWING PROCEEDINGS HAVE BEEN ORDERED SEALED BY  
 17 THE COURT: MR. BURTON, WHAT IS -- FIRST OF ALL, I WOULD LIKE YOU TO TELL ME  
 18 WHAT CONCERNS YOU HAVE ~~THE~~ DEFENDANT! MAY I URGE THE COURT TO HAVE  
 19 MY ATTORNEY SWORN? THE COURT: WHY? THE DEFENDANT: BECAUSE HE NEEDS  
 20 TO TESTIFY. THE COURT: YOU NEED TO TELL -- THE DEFENDANT: THE JUDGE MAY  
 21 WANT TO ASK HIM -- THE COURT: I'LL DECIDE IF I NEED TO DO THAT, THE  
 22 DEFENDANT *Enrol* COURT: WHAT ARE THE REASONS? THE DEFENDANT: FOR  
 23 ONE THING, YOUR HONOR, I HAVE JUDICIAL PREDJUDICE, I HAVE JUDICIAL  
 24 CONFLICT OF INTEREST AS YOUR HONOR WAS THE ONE WHO WAS MY BEST  
 25 WITNESS IN THIS MATTER. AND I FEEL I'VE BEEN DENIED OF MY  
 26 RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE  
 27 WHO SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT  
 28 THOMAS STRUCK ANGELA SANDERS IN THE HEAD WITH THE GLASS.

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1 AND YOU ARE THE ONE THAT KNOWS THAT ANGELA SANDERS FEVERED HERSELF,  
2 BECAUSE IN YOUR COURT AT THE EX PARTE HEARING WHERE YOU (P) RESIDED AT,  
3 I HAD MY PAPERWORK FILLED OUT AS A PETITIONER, BUT YOU MADE US SWITCH  
4 SEATS. YOU SAID THAT THE ACTION BEGAN IN THE FAMILY COURT, INITIATED  
5 THROUGH CHILD SUPPORT DIVISION BY MS. SANDERS, AND YOU MADE ME  
6 THE RESPONDENT. AND THEREFORE, YOU HAD KNOWLEDGE OF EVERYTHING,  
7 MY FEARS OF THOMAS WAS PRESENT, IF I CAN REFER YOU TO YOUR OWN  
8 TRANSCRIPT, YOU'LL SEE THAT HE WAS STALKING ME THEN. THE COURT,  
9 AGAIN, LET ME STOP YOU RIGHT THERE SO IN WHAT WAY IS THAT A REASON  
10 FOR DISCHARGING MR. ADAMS, THE DEFENDANT? I WANT A MOTION FOR A  
11 MISTRIAL, I HAVE A CONFLICT OF INTEREST WITH COUNSEL BECAUSE  
12 I MADE HIM AWARE OF THIS, AND I WANTED -- TO HAVE HIM SWORN.  
13 HE'S AWARE OF THIS CONFLICT. THE COURT: OKAY, ARE THERE ANY  
14 OTHER GROUNDS THE DEFENDANT? YES, THE COURT: WHAT OTHER  
15 GROUNDS? THE DEFENDANT: WHEN I MADE MY MOTION TO GO PROPER,  
16 I FELT YOU WERE PREJUDICE IN DENYING THAT AND ALL MY OTHER  
17 MOTIONS BECAUSE -- THAT DENIED ME -- IT DEPRIVED ME OF MY 14TH  
18 AMENDMENT RIGHT FOR DUE PROCESS, AND I'D LIKE A DISMISSAL  
19 BASED ON A VIOLATION OF MY 6TH AMENDMENT RIGHT AND MY 14TH AMENDMENT  
20 RIGHT, BECAUSE YOU DENIED ME MY RIGHT TO GO PROPER AND YOU KNEW  
21 THAT I WAS COMPETENT, THE COURT: AND WHAT IS THE -- HOW DOES THAT  
22 RELATE TO YOUR -- THE DEFENDANT: COUNSEL WAS AWARE OF THIS AND  
23 HE DID NOT INFORM THE COURT, THIS IS NEGLIGENCE IN MY PROSECUTION.  
24 HE DID NOT INFORM THE COURT OF THIS MATTER, AND THAT IS THE INEFFECTIVE  
25 ASSISTANCE OF COUNSEL IN VIOLATION OF MY 6TH AND 14TH AMENDMENT RIGHTS  
26 TO DUE PROCESS, I'D LIKE A DISMISSAL ON THAT, COUNSEL IS AWARE  
27 THAT PROSECUTION HAS NOT PROVIDED ME WITH ALL DISCOVERY AS MR.  
28 PLUMMER HAD MOTIONED MS. MARIA HANNAH WITH MOTIONS ON [ ] BRADY FOR

ALL DISCOVERY, PROSECUTION DID NOT RESPOND WITHIN A TIMELY MANNER,  
THEREFORE, DENIED ME MY DUE PROCESS, BECAUSE I HAD THE RIGHT  
TO BE ABLE TO KNOW THE EVIDENCE AGAINST ME. -- I WOULD  
OBJECT TO ANYTHING PROSECUTION WOULD SAY AS FAR AS THEIR.  
THE COURT OKAY, LET ME STOP YOU THERE, SO DISCOVERY ISSUE  
IS ANOTHER REASON? THE DEFENDANT: DISCOVERY ISSUES AND--  
THE COURT: ARE THERE ANY OTHER GROUNDS IN WHICH-- THE DEFENDANT:  
-- AND THE POLICE ALSO DENIED ME MY DUE PROCESS AS FAR AS EQUAL  
PROTECTION UNDER THE LAW. THE COURT. OKAY LET ME STOP YOU RIGHT  
THERE. "I UNDERSTAND THAT MOTION, ARE THERE ANY GROUNDS ON WHAT  
YOUR SEEKING TO CHALLENGE MR. ADAIR, THE DEFENDANT: CONFLICT OF  
INTEREST BECAUSE-- YOU WERE THE PRESIDING JUDGE AT THE TIME  
THOMAS SHOWED UP AND HE WAS SERVED BY YOUR BALIFF IN YOUR  
COURTROOM AT THE EX PARTE HEARING. I'VE BEEN FALSELY ARRESTED,  
PROLONGED DETAINMENT, AND FALSE IMPRISONMENT, MY WHOLE DUE PROCESS,  
MY CIVIL RIGHTS HAVE BEEN VIOLATED. COUNSEL HAS FAILED TO NOTIFY THE  
COURTS. I HAVE SEE EXHIBIT "A", PAGE 116, RTEXCERPT 821, LINES, 1-5, SEE  
EXHIBIT "A", PAGE 117, RTEXCERPT 822, LINES 3, 4, 5, 18-22, 25-28.  
SEE EXHIBIT "A", PAGE 118, RTEXCERPT 823, LINES 3-10, 13, 14-16, 20-26, 28.  
SEE EXHIBIT "A", PAGE 119, RTEXCERPT 824, LINES 1-6, 10, 11, 18. THE COURT: COMPLAINTS.  
SO, NUMBER ONE, ALMOST OF ALL THESE ISSUES EXCEPT POSSIBLY THE CONFLICT  
OF INTEREST RELATING TO THE RESTRAINING ORDER-- WHICH I'LL HAVE MR. ADAIR  
ADDRESS IN A MOMENT-- THE COURT: I THINK THAT YOU INDICATED YOU MIGHT BRING  
ANOTHER PROPER MOTION ON THE DAY THAT "WE" DECIDED TO REFER YOU OUT  
FOR 1368 PROCEEDINGS. -- THE CHARGES -- THERE WAS A SECOND AMENDED  
COMPLAINT, AND IT WAS RAISED AND NOTICE GIVEN TO YOUR ATTORNEY PRIOR TO  
TRIAL. AGAIN, I DON'T SEE ANY BASIS IN THAT ISSUE TO RELIEVE HIM, THE  
FRUIT-OF-THE-POISONOUS-TREE ARGUMENT--



1 SO THE ONLY ISSUE I BELIEVE THAT MAY NEED SOME INPUT ONTO PERHAPS  
2 BETTER UNDERSTAND THE CONCERN IS AN IS RAISED THAT SOMEHOW THIS COURT  
3 IS [A WITNESS] OR HAS KNOWLEDGE ABOUT THE PROCEEDINGS -- MR. ADAIR,  
4 DO YOU HAVE ANY ADDITIONAL INFORMATION OR BACKGROUND ON THAT ISSUE?  
5 MR. ADAIR: I BELIEVE YOU DID SIGN SOME OTHER DOCUMENTS IN THE  
6 CASE, THE COURT: -- THE PRO BETWEEN MR. BURTON AND MR. THOMAS,  
7 MR. ADAIR: -- IT LOOKS LIKE YOU SIGNED THE NOTICE THE COURT:  
8 -- OSC HEARING? MR. ADAIR, THAT'S CORRECT, THE COURT: OKAY,  
9 ALL RIGHT, -- SEE ANY REASON WHY ANY INVOLVEMENT I HAD IN A  
10 FAMILY LAW -- DUE TO THIS COURT'S INVOLVEMENT IN THAT CASE.  
11 MR. ADAIR: THE OTHER THING ABOUT IT IS THAT IT APPEARS THAT  
12 ANYTHING THAT YOU -- IF YOU WERE TO HAVE [BEEN A WITNESS], IT'S  
13 RELEVANT ISSUES IN THIS MATTER THAT THE DOCUMENTS  
14 THEMSELVES COULD BE USED RATHER THAN YOURSELF -- CONFLICT,  
15 THE COURT: ALL RIGHT, MR. ADAIR: MR. BURTON WOULD LIKE TO ADDRESS  
16 THE COURT AGAIN, THE COURT: ALL RIGHT, MR. BURTON, YOU MAY ADDRESS  
17 ME IN PARTICULAR WITH REGARD TO THE ISSUE THAT MR. ADAIR JUST  
18 ADDRESSED ON THE RESTRAINING ORDER OR THE CUSTODY MATTER.  
19 THE COURT: ALL RIGHT, GO AHEAD, THE DEFENDANT: YES, MA'AM, -- "YOU  
20 MAY REFER YOU TO THE COURT CLERK'S RECORDS, SEE EXHIBIT A" PAGE 129  
21 EXCERPT 825, LINES 1-8, 19, 20, 21. THE COURT: ALL RIGHT, WELL, I THINK THAT --  
22 THERES NO BASIS TO RELIEVE HIM BASED ON HIS STRATEGIC DECISION NOT TO  
23 CHALLENGE THIS COURT. IT WOULD HAVE HAD TO BE A CHALLENGE FOR CAUSE  
24 BECAUSE THERE'S ALREADY BEEN A PEREMPTORY EXERCISED AGAINST JUDGE HANDIAN, AND  
25 HIS STRATEGIC DECISION NOT TO DO -- IF I FIND MR. ADAIR HAS PROPERLY  
26 REPRESENTED DEFENDANT AND WILL CONTINUE TO DO SO -- TRANSCRIPT WILL  
27 BE SEALED ABSENT ORDER <sup>GRANT</sup> FURTHER COURT ORDER -- WE NEED TO PROCEED  
28 NOW WITH OUR JURY TRIAL SEE EXHIBIT B, PAGE 23, EXCERPT 329, LINES 4-10, 20-23

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1  
2 SEE EXHIBIT "A" PAGE 25 RT EXCERPT 189, LINES 1-8, 11-19, 21-28 SEE ALSO EXHIBIT "A",  
3 PAGE 26, RT EXCERPT 190 LINE 4. SEE ALSO EXHIBIT "A" PAGE 27, RT EXCERPT 191,  
4 LINES 18-28. THE DEFENDANT: MY DAUGHTER (DEONA BURTON) BECAUSE SHE  
5 ALSO WAS A EQUAL PROTECTANT ON THAT ORDER, WHICH WAS VIOLATED.  
6 THE COURT: ANY OTHER MOTIONS YOU THOUGHT SHOULD BE FILED? THE DEFENDANT:  
7 YES. ALSO, THERE ARE FALSE STATEMENTS THAT HAVE BEEN ENTERED INTO  
8 THE RECORD AS FAR AS ME ALLEGEDLY -- AS FAR AS THE MOTION THAT  
9 WAS WRITTEN TO 1538.5. THE COURT: ALL RIGHT. IS THIS THE SAME ISSUE  
10 YOU HAD RAISED TO JUDGE PRECKEL, WHERE THERE WAS CONCERN RAISED BY  
11 YOU THAT THE STATEMENT OF FACTS DIDN'T FULLY SET FORTH THINGS APP-  
12 PROPRIATELY? THE DEFENDANT: WELL, WITH JUDGE PRECKEL -- THE COURT:  
13 I JUST WANT TO KNOW IF THAT'S THE SAME ISSUE YOU'RE TALKING ABOUT?  
14 THE DEFENDANT: -- BUT I WAS DENIED MY MARS DEN BY JUDGE PRECKEL. HE  
15 NEVER GAVE ME AN OPPORTUNITY TO. THE COURT: WHAT OTHER ISSUES ARE  
16 THERE BEYOND WHAT YOU'VE TOLD ME HAVE NOT BEEN ADEQUATE BY THE DEFENSE?  
17 THE DEFENDANT: THE FACTS OF THE CASE HAVE BEEN MISSTATED. -- I ASKED HIM  
18 TO FILE A MOTION WITH THE JUDGE -- YOURSELF -- ORDERING PROSECUTION TO  
19 TURN OVER ALL DISCOVERY BECAUSE MOTIONS THAT WERE FILED BY MR. PLUMMER  
20 'JULY -- TO COMPEL PROSECUTION TO TURN OVER ALL DISCOVERY. THE COURT:  
21 IS THAT SOMETHING YOU HAD ORIGINALLY ASKED YOUR EARLIER COUNSEL?  
22 THE DEFENDANT: -- EXTRAORDINARY WRIT OF MANDATE FOR REVIEW OF THE 1538.5  
23 MOTION. -- APPEALING JUDGE PRECKEL'S DECISION AS FAR AS HIS DENIAL OF SUPPRESSING  
24 THE VEHICLE, BECAUSE THE VEHICLE WAS UNLAWFULLY ENTERED, SEIZED AND  
25 REMOVED FROM MY RESIDENCE WITHOUT -- (A WARRANT) THE COURT: -- THE WRIT OF  
26 MANDATE FROM THE SUPPRESSION? THE DEFENDANT: YES. SEE EXHIBIT "A" PAGE  
27 28, RT EXCERPT 192 LINES 1, 2, 5-8. THE DEFENDANT: WHERE I'M TRYING TO PREPARE  
28 FOR TRIAL AND MAYBE GET THIS DISMISSED, BEFORE TRIAL

~~SEE EXHIBIT "A" PAGE 25 RT EXCERPT 189, LINES 1-8, 11-19, 21-28~~ *Enverous*

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1 THE COURT: WHY DON'T I STOP YOU THERE SINCE YOU'VE GIVEN ME  
2 THE LIST OF THE TYPE OF MOTIONS, I THINK WHAT I NEED TO DO IS  
3 GIVE MR. ADAIR AN OPPORTUNITY TO EXPLAIN WHAT WORK HE HAS DONE,  
4 SEE EXHIBIT "A" PAGE 31, RT EXCERPT 195 LINES 7, 8, 9. MR. ADAIR: WELL PART  
5 OF IT IS MR. BURTON HAS BEEN DOING A LOT OF RESEARCH ON HIS OWN  
6 IN THE LAW LIBRARY AND HAS A LOT OF LEGAL THEORIES AS FAR  
7 AS WHY THE CASE SHOULD BE DISMISSED, SEE EXHIBIT "A", PAGE 32,  
8 RT EXCERPT 196, LINES 17-23, 25-28. THE COURT:--MEETING WITH HIM,  
9 AND SO DO YOU HAVE ANY TYPE OF ESTIMATE TO-- SINCE YOU CAME ON  
10 THE CASE BACK IN NOVEMBER, DO YOU HAVE ANY WAY TO ESTIMATE HOW  
11 OFTEN YOU'VE EITHER MET FACE TO FACE OR BY MR. ADAIR: I DON'T KNOW--  
12 --I DON'T KNOW HOW MANY TIMES ON THE TELEPHONE WE'VE TALKED,--  
13 I DID NOT TALK TO HIM MONDAY BECAUSE I-- AFTER WE TRAILED THE CASE  
14 FOR TWO DAYS, I HAD TO LEAVE IMMEDIATELY TO MAKE AN APPOINTMENT  
15 DOWNTOWN. (MR. BURTON DEFENDANT) HE WAS NOT IN THE COURTROOM FOR THE  
16 TRAILING. SEE EXHIBIT "A", PAGE 34, RT EXCERPT 198<sup>LINE 10-13, 17, 21-23, 26, 27, 28.</sup> SEE ALSO EXHIBIT "A", PAGE 35,  
17 RT. EXCERPT 199, PAGE <sup>EVERETT</sup> LINES 1, 3, 8, 9, 11, 12, 16-18. THE COURT: WERE THOSE  
18 DONE BY YOU OR BY MR. PLUMMER? MR. ADAIR: I THINK BOTH. I THINK MR. PLUMMER  
19 FILED A NUMBER OF MOTIONS, INCLUDING A DISCOVERY MOTION AND THAT THEY  
20 WERE BASICALLY TAKEN OFF CALENDAR. THE COURT:--"PROTECTIVE ORDER"  
21 AND,-- DO YOU HAVE ANY UNDERSTANDING? MR. ADAIR: AS FAR AS--EXCUSE  
22 ME. THE COURT: ALL RIGHT. MR. ADAIR: SOME OF THE MOTIONS THAT MR. BURTON  
23 FEELS ARE VERY IMPORTANT IN HIS CASE--IN MY VIEW POINT,--SUCH AS THE  
24 REQUEST FOR A WRIT OF MANDATE, IT SEEMS LIKE A WASTE OF TIME TO  
25 CONCENTRATE ON THAT WITH THE-- ON TRIAL ISSUES. THE COURT: HE RAISED  
26 AN ISSUE ABOUT FALSE STATEMENTS ON THE RECORD. MR. ADAIR: I THINK WHAT  
27 HE MAY BE REFERRING TO IS WHEN I WROTE UP A STATEMENT OF FACTS, HE  
28 DISAGREED WITH IT AND FELT--HAS BEEN THAT THE STATEMENT OF FACTS

1 SEE EXHIBIT A PAGE 97, R EXCERPT 17 LINES, 1-3, 10-13, 17-19.  
2 STATEMENT OF FACTS - MARSDEN HEARING 11-05-04. THE HON. JUDGE PRECKEL  
3 PRESIDING -> THE COURT: MR. BURTON, IF I GRANT YOUR REQUEST -- AND LET  
4 ME SAY PARENTHETICALLY YOU'RE IN MY VIEW, VERY WELL-SPOKEN.  
5 YOU'VE OBVIOUSLY DONE SOME READING -- AND YOU'VE BEEN  
6 THROWING AROUND THE MAJORITY OF THE AMENDMENTS IN THE BILL  
7 OF RIGHTS AND A FEW OTHERS TO BOOT, -- BUT I'M NOT GOING  
8 TO BELABOR THOSE MATTERS PRESENTLY OTHER THAN TO UNDERSCORE  
9 MY BELIEF, STRONGLY-HELD BELIEF THAT ASSUMING THE COURT GRANTS  
10 YOU YOUR REQUEST FOR A NEW COUNSEL, -- IT'S THE ATTORNEYS JOB  
11 TO REPRESENT YOU AND ADVOCATE YOUR POSITION AND PROTECT YOUR  
RIGHTS AND INTERESTS. SEE NOW EXHIBIT A, PAGE 3, R EXCERPT II, LINES,  
1-24, 27, 28. THE DEFENDANT. (MARSDEN HEARING 11-05-04) 'SO COUNSEL IN A SENSE  
-- I DON'T WANT TO BE HARSH AND SAY LIED TO ME, (REFERRING TO MR. PLUMMER)  
BUT HE DECEIVED ME AND HE CAME TO VISIT ME AND WE HAD A CONVERSATION  
AND I ASKED HIM AGAIN, "IS THERE ANYTHING I CAN DO PRIOR TO TRIAL TO  
SUPPRESS THIS EVIDENCE THAT WAS UNLAWFULLY OBTAINED, INCLUDING  
MY ARREST," BECAUSE IN THE BEGINNING, AS I SAID, THERE WAS A  
MIRANDA VIOLATION. I SHOULD HAVE BEEN MIRANDIZED WHEN  
THE OFFICER BEGAN ASKING ME THAT DIRECT INCRIMINATING  
QUESTION "[ ]", -- ALSO, HE ENTERED MY APARTMENT UNLAWFULLY  
IN VIOLATION OF 4TH AMENDMENT (AND 14TH DUE PROCESS AND EQUAL PROTECTION  
CLAUSES) -- ATTORNEY HAD TOLD ME NUMEROUS TIMES THAT THERE'S NOTHING  
YOU CAN DO UNTIL TRIAL, OKAY. -- WORKED INDEPENDENT OF HIM BECAUSE ALSO  
HE IS (HAS) NOT GATHERED, IN SEVEN MONTHS, ANY EXCULPATORY EVIDENCE. I  
DO NOT HAVE HARD DISCOVERY. EACH TIME I'VE COME TO COURT I HAVE NOT  
RECEIVED A RECEIPT FROM THE COURT'S THAT I HAVE BEEN TO COURT.



1 SEE EXHIBIT "E", PAGE 6, RTEXCERPT 28, LINES 13 AND 14. MR. ADAIR: BY THE WAY,

2 COULD I ADDRESS DISCOVERY BRIEFLY? THE COURT: NO. WHEN I SAY "NO"

3 SEE EXHIBIT "E", PAGE 13, RTEXCERPT 64, LINES 22-28 ALSO SEE

4 EXHIBIT "E", PAGE 14, RTEXCERPT 65, LINES 1-9. MR. ADAIR: COULD I

5 HAVE A MOMENT WITH MY CLIENT, YOUR HONOR? THE COURT: SURE

6 MR. ADAIR. MR. ADAIR: YES, YOUR HONOR. BEFORE WE GO ANY FURTHER,

7 YOUR HONOR, MR. BURTON WOULD LIKE YOU TO READ HIM THE

8 COURT RULES CONCERNING HIS RIGHTS TO A CONTINUANCE,

9 HIS RIGHT TO AN IN CAMERA HEARING AND HIS RIGHT TO

10 APPEAL. THE COURT: WELL, I'M NOT GOING TO DO ANY OF THAT

11 AT THE MOMENT. PLUS IT'S NOT MY FUNCTION TO RECITE

12 LAW AND PROCEDURE FOR THE BENEFIT OF MR. BURTON. WE'RE

13 IN THE MIDDLE OF THIS HEARING AND WE'RE EITHER GOING

14 TO CONCLUDE THIS HEARING OR ELSE WE'RE GOING

15 TO FURTHER THE HEARING, SO TO SPEAK, BY ELICITING

16 ADDITIONAL TESTIMONY, MR. ADAIR: THANK YOU YOUR

17 HONOR. STATEMENT OF RELEVANT FACTS - COUNSEL ADAIR WAS ASLEEP DURING

18 A SUBSTANTIAL PORTION OF THE 1538.5, HAD FALSELY INFORMED THE COURT THAT

19 DEFENDANT WAS GOING TO TESTIFY, MISSTATED THE FACTS, DEFENDANT HAD NO

20 LEGAL ASSISTANCE. THE HON. JUDGE PRECKEL HAD TO AWAKEN COUNSEL,

21 COUNSEL WAS NOT CONSCIOUS AND DID NOT UNDERSTAND WHAT WAS

22 TRANSPIRING AT ALL TIMES. COUNSEL WAS "ABSENT". THE TRIAL

23 COURT ABUSED ITS DECRETION IN DENYING PETITIONER HIS RIGHT

24 TO AN IN CAMERA, HIS MARS DEN, BECAUSE CLEARLY AT THAT POINT

25 PETITIONER WAS CONDUCTING HIS OWN HEARING, THE COURT

26 FURTHER ABUSED ITS DISCRETION IN ITS UTTER REFUSAL TO INFORM

27 DEFENDANT ON HIS RIGHTS CONCERNING AN IN CAMERA HEARING AND HIS

28 RIGHTS TO APPEAL THE 1538.5 HEARING. SEE EXHIBIT "E" PAGE 16, RTEXCERPT 78

29 LINES 25-28, SEE ALSO EXHIBIT "E", PAGE 17, RTEXCERPT 79 LINES 16, 9-12.

1 MR. ADAIR: (APPROX. ON OR ABOUT 1-28-05, 1530.5 HEARING, EXAMINING THE  
2 ALLEGED CODEFENDANT MR. MCKELVEY,) Q. BUT YOU WERE NEVER READ  
3 YOUR RIGHT; CORRECT? THE COURT: HE'S ALREADY ANSWERED THAT  
4 AND IT'S BECOMING VERY CLEAR THAT MR. BURTON IS NOW  
5 DIRECTING THE QUESTIONING BY SCRIBBLING NOTES FOR  
6 YOUR BENEFIT, MR. ADAIR, AND FRANKLY, A LOT OF THE QUESTIONS  
7 ARE IRRELEVANT. DO YOU HAVE ANYTHING FURTHER? MR. ADAIR:  
8 IF I COULD HAVE A MOMENT, YOUR HONOR. YOUR HONOR, MY CLIENT  
9 WOULD LIKE YOU TO KNOW -- THE COURT: WHAT'S THAT  
10 SUPPOSE TO MEAN? MR. ADAIR: I DON'T KNOW, YOUR HONOR.  
11 THE COURT: NOR DO I. SO WE'RE GOING TO KEEP ON GOING  
12 SEE NOW EXHIBITE, PAGE 11, RT EXCERPT 59, LINES 25-28 AND SEE ALSO  
13 EXHIBITE, PAGE 12, RT EXCERPT 59, LINES 1-12 > MR. ADAIR: YOUR HONOR, MAYBE  
14 I MISSPOKE, WHAT I SAID WAS CONFUSING. I HAD HIM UNDER SUBPOENA.  
15 THE PROSECUTION DID NOT. THE COURT: I UNDERSTOOD MISS HANNAH TO SAY  
16 SEE DID HAVE HIM UNDER SUBPOENA MS. HANNAH: NOT FOR THE MOTION,  
17 YOUR HONOR. THE COURT: NO, I UNDERSTAND. MS. HANNAH: FOR TRIAL  
18 THE COURT: I MEANT FOR TRIAL ON MONDAY THE COURT: ON MONDAY.  
19 MR. ADAIR: I'M SORRY, THE COURT: YOU RELEASED HIM TODAY, BUT  
20 SHE'S GOT HIM UNDER THUMB, SO TO SPEAK, FOR TRIAL ON MONDAY  
21 THAT'S WHY I'M ENLISTING HER ASSISTANCE TOGETHER  
22 WITH YOUR RENEWED EFFORTS TO HAVE HIM  
23 HERE MONDAY MORNING. OKAY? MR. ADAIR: YES, SIR. SEE EXHIBITE,  
24 PAGE 15, RT EXCERPT 66, LINES 20-27. THE COURT: STATUS UPDATE,  
25 PLEASE. MR. ADAIR: YOU KNOW, YOUR HONOR, I THINK THE BOTTOM LINE  
26 IS THE DEFENSE SHOULD REQUEST A CONTINUANCE, AND I AM REQUESTING  
27 A CONTINUANCE OF THIS, IN TALKING TO MR. BURTON -- THE COURT: WHEN YOU SAY  
28 "OF THIS," YOU MEAN THE SUPPRESSION MOTION -- MR. ADAIR: THAT'S CORRECT THE COURT: IN PARTICULAR?

## STATEMENT OF FACTS

SEE EXHIBIT "A", PAGE 67, R.T. EXCERPT 256, LINES 1-5, 10-16, THE DEFENDANT.

(1-01-05, MARSDEN) WHAT I AM SAYING, SIR-- EXCUSE ME, IS THAT HE CAME BEFORE YOU-- I'M SORRY SIR, HE CAME TO YOU, HE MANIPULATED

ME TO GET A PEREMPTORY CHALLENGE. THE COURT:-- WAS A

PEREMPTORY CHALLENGE FILED IN THIS CASE? MR. ADAIR: IT WAS, YOUR

HONOR. THE COURT: AGAINST WHO? MR. ADAIR: AGAINST JUDGE--THE COURT,

HANOIAN? MR. ADAIR: HANOIAN. YES YOUR HONOR. SEE EXHIBIT "A", PAGE 65,

RT EXCERPT 254, LINES 15, 16, 18-24. > THE COURT: MR. ADAIR, YOU ARE SAYING IS

WORKING FOR THE PROSECUTION? THE COURT: IS THAT WHAT YOU ARE

SAYING? THE DEFENDANT: YES SIR. -- I AM SAYING HE'S STATE INTERPOSED.

THE COURT: HE'S WHAT? "MR. ADAIR": HE'S STATE INTERPOSED, THE COURT:

STATE INTERPOSED, THE DEFENDANT; HE'S COURT APPOINTED.

RELEVANT FACTUAL BACKGROUND - THE HON JUDGE HANOIAN WAS THE MAGISTRATE

PRESIDING OVER THE PETITIONERS PRELIMINARY HEARING, BOUND PETITIONER

OVER FOR TRIAL WITHOUT PROBABLE CAUSE BASED ON TESTIMONY OF

INSUFFICIENT EVIDENCE, THAT WAS UNLAWFUL SEIZED FROM PETITIONER'S HOME.

SUPPRESSED AS EVIDENCE AT THE 1538.5 HEARING. PETITIONER BELIEVES THAT

AFTER HE HAD ALREADY BEEN SEEN IN JUDGE HANDIAN'S COURT HE COULDN'T THEN

BE PEREMPTORILY CHALLENGED AFTER THE FACT, SEE NOW EXHIBIT "A", PAGE 89

RT, EXCEPT 797, LINES 1-11, > THE COURT: (HON. L. HALGREN) ALL RIGHT, SO YOU HAVE

YOUR FRAMEWORK AS TO WHAT YOU CAN DO. MR. ADAIR: YES, YOUR HONOR, THE COURT;

I THINK -- "MR. ADAIR:" IT'S FUN BEING A PROSECUTOR, THE COURT! IT DOES PUT

YOU IN A DIFFERENT ROLE, DOESN'T IT? ALL RIGHT LET'S TALK ABOUT

EXHIBITS, WE DON'T REALLY IN MY VIEW NEED TO DO THIS ON THE RECORD

BECAUSE WE WILL DO A MORE FULL INSTRUCTION REVIEW ON THE RECORD

AT THE END OF THE CASE.



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1 SEE EXHIBIT B, PAGE 5, ~~RT EXCERPT 1071~~ PAGES 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, RT  
2 EXCERPTS, 0011, 0012, 0013, 0014, 0015, 0016, 0017, 0018, 0019, 0020, 0021, AND 0022,  
3 LINES 1-28 (SEE ALL) AS SO STIPULATED AND SO SPECIFIED (MOTION FOR DISCOVERY  
4 FILED, ON OR ABOUT JULY 30, 04 BY DEFENSE COUNSEL MR. PLUMMER, SERVED ON  
5 PROSECUTION, MS. HANNA, WHO COUNSEL ALLEGES FAILED TO RESPOND, DISCOVERY  
6 MOTION WAS FILED PURSUANT TO BRADY V. MARYLAND SUPRA, SEE ALSO EXHIBIT B  
7 PAGE 24, RT EXCERPT 0023, SO STIPULATED (MR. PLUMMER'S LETTER DATED  
8 06 JULY 04, REQUESTING INFORMAL DISCOVERY FROM D.A. MS. HANNAH).  
9 SEE EXHIBIT B, PAGE 27, PETITIONS DENIED MOTION FOR DISCOVERY  
10 PURSUANT TO P.C. § 1054.9 FILED 13 JULY 07.  
11 SEE EXHIBIT B, PAGE 22, RT EXCERPT 1237, LINES 13, 14, 15, 18, 23, 24.  
12 (MARS DEN 7-29-05) THE DEFENDANT: MAY I MAKE ONE OTHER MOTION?  
13 THE COURT: -- ON WHAT GROUNDS. THE DEFENDANT: A MOTION FOR  
14 A RETRIAL. THE COURT: OKAY. THAT WOULD BE A SEPARATE MOTION.  
15 -- BUT TODAY WILL NOT BE THE DAY. SEE EXHIBIT B, PAGE 56, RT EXCERPT  
16 1071, LINES 1-9, 12-15, MR. ADAIR: THE ORDER OR EVEN IF YOU  
17 WANT TO TAKE JUDICIAL NOTICE THAT THERE WAS A RESTRAINING  
18 ORDER ISSUED IN THIS CASE ON A CERTAIN DATE, THE COURT:  
19 IT'S NOT REALLY IN DISPUTE. DO YOU HAVE ANY OBJECTION TO THAT?  
20 MR. TROCHA: WELL WE'RE NOT TRYING TO PROVE MR. THOMAS  
21 VIOLATED A RESTRAINING ORDER, -- HE HAD KNOWLEDGE THERE  
22 WAS AN ORDER, THE COURT: I CAN TAKE JUDICIAL NOTICE THAT  
23 THAT WAS ISSUED ON THAT DATE. I'LL DO THAT. MR. ADAIR: THANK  
24 YOU, YOUR HONOR, THE COURT: OKAY, THANK YOU, BYE, SEE EXHIBIT B, PAGE  
25 57, RT EXCERPT 1071 (7-27-05), LINES 5, 6, 10, 13, 27 (THE COURT: LET'S  
26 GO ON THE RECORD, COUNSEL AND THE DEFENDANT ARE PRESENT, THE JURY IS NOT,  
27 MR. TROCHA: RIGHT, (THE COURT): -- ON THE JUDICIAL NOTICE, I REVIEWED THE FILE.  
28 WOULD IT BE SIMPLY ADEQUATE TO NOTE UNDER THE CASE NUMBER THAT



MR. E. W. BURTON # 802725 FWD ORDER  
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1 ON SUCH AND SUCH A DATE AN ORDER FOR INJUNCTION PROHIBITING  
 2 HARASSMENT WAS ISSUED BY THE COURT PROTECTING MR. BURTON?  
 3 MR. ADAIR: CORRECT. THE COURT: THAT'S ALL YOU NEED? MR. ADAIR: THAT  
 4 WOULD BE FINE, YOUR HONOR. THE COURT: ALL RIGHT, I'LL DO THAT.  
 5 SEE EXHIBIT B, PAGE 55, RE. EXCERPT 1069, LINES 2, 3, 4, 5, 10, 11, 15, 16, 19, 25,  
 6 -28. THE COURT: WELL, I'M NOT EVEN SURE HOW WE WOULD KNOW IT'S  
 7 HIS BACKPACK. -- THE OFFICERS FOUND A BACKPACK, WE DON'T  
 8 HAVE TESTIMONY AS TO WHOSE IT IS OR ANYTHING. -- THE COURT: OKAY  
 9 WELL, IF IT FALLS ALONG THE LINES OF THE DECLARATIONS FILED  
 10 WITH THE TRO, IT WAS -- MR. TROCHA, ESSENTIALLY, IT'S GOING  
 11 TO PROVE A STATEMENT THAT CAN'T BE CROSS-EXAMINED, THAT --  
 12 MR. ADAIR: FOR PROOF OF HIS -- PROBLEMS. MR. ADAIR: I WOULD LIKE  
 13 TO INTRODUCE A COPY OF THE RESTRAINING ORDER? THE COURT:  
 14 THE ORDER? RELEVANT FACTUAL BACKGROUND - PROSECUTION HELD AND  
 15 SUPPRESSED DEFENSE EXHIBIT UNTIL 7-27-05, APPROX 2 WEEKS INTO  
 16 TRIAL, DEFENSE COUNSEL ADAIR DID A TARDY INSPECTION OF DEFENDANT'S  
 17 ALLEGED BACKPACK, ALLEGED TO BE FOUND ON THE ROOF OF HIS CAR  
 18 BY POLICE ON 19 MARCH 05, PROSECUTION USED FALSE INFORMATION  
 19 FROM AN ALLEGED NOTE BOOK FOUND INSIDE OF THIS BACKPACK NEVER  
 20 IN PETITIONER'S CONTROL, THE COURT DENIED PETITIONER'S RIGHT TO  
 21 MAKE A DEFENSE, AS COPIES FOUND IN BACKPACK OF DOCUMENTS  
 22 WERE TAKEN FROM A COURT FILE BY DEFENDANT ON APPROXIMATELY 20 FEBRUARY  
 23 PETITIONER HAD KNOWLEDGE AND PROOF THAT HE HAD KNOWN ABOUT MR. THOMAS'S  
 24 VIOLENT CRIMINAL BEHAVIOR, EVIDENCE THAT WAS ADMISSIBLE UNDER  
 25 352, THE COURT PREJUDICALLY ERROR IN DENYING PETITIONER HIS  
 26 U.S. CONST RIGHT TO MAKE A DEFENSE UNDER THE DUE PROCESS CLAUSE AND  
 27 EQUAL PROTECTION OF THE 14TH AMENDMENT, PROSECUTION'S SUPPRESSION  
 28 OF EVIDENCE FAVORABLE TO DEFENSE AND FAILURE TO TIMELY DISCLOSE

MR. E. W. BURTON AFD 2720 EN PROPER  
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### STATEMENT OF FACTS.

ON OR ABOUT 11-05-04, PETITIONER HAD A MARSDEN HEARING, AT WHICH POINT MR. PLUMMER RESIGNED OF THE CASE. HE HAD FILED A 1538.5 MOTION THAT BEGAN WITH THE (5TH AND 6TH AMENDMENT) VIOLATION ALSO KNOWN AS A MIRANDA VIOLATION, PRIOR TO THE POLICE UNCONSTITUTIONAL ENTRY OF PETITIONER'S RESIDENCE WITHOUT CONSENT AND SEIZED EVIDENCE LATER SUPPRESSED THAT WAS UNLAWFULLY SEIZED. THE ALLEGED MIRANDA VIOLATION OCCURED AS ARRESTING OFFICER HOLMES WAS ESCORTING, ALLEGEDLY PETITIONER TO HIS PATROL VEHICLE AFTER PETITIONER HAD BEEN DRAWN UPON WITH OFFICER HOLME'S GUN, AND UNCONSTITUTIONALLY SEIZED IN HIS PERSON, IN HIS REASONABLE EXPECTATION OF PRIVACY. OFFICER HOLMES HAD NOT AT THIS POINT MIRANDIZED (GIVEN 5TH AND 6TH AMENDMENT WARNINGS) AT THE POINT IN TIME AGENT KIRK ASKED THE PETITIONER A DIRECT INCRIMINATING QUESTION. PETITIONER SHOULD'VE BEEN, BUT HADN'T BEEN MIRANDIZED (GIVEN 5TH AND 6TH AMENDMENT WARNINGS), DEFENSE COUNSEL MR. PLUMMER. FAILED TO ITEMIZE EACH ITEM UNCONSTITUTIONALLY SEIZED, OMITTED FACTS, DIDN'T BEGAN THE 1538.5 SUPPRESSION MOTION BASED ON THE (14TH U.S. CONST AMEND. VIOLATION) 4TH AMENDMENT VIOLATION, AND VIOLATED DIVISION III COURT RULES, WHICH HE HAD DEEMED THE MOTION TO BE AN ABANDONMENT MOTION, AS PETITIONER HAD LEARN THROUGH HIS RESEARCHING AS A LAYMAN. SEE NOW EXHIBIT "D", PAGE 32, RTEXCERPTS, LINES 3-23, SEE ALSO EXHIBIT "D", PAGE 33, RTEXCERPT 6, LINES 3-22, SEE ALSO, EXHIBIT "D", PAGE 34, LINES 3-10, 17-21 SEE EXHIBIT "D", PAGE 35, RTEXCERPTS, LINES 1, AND 23. SEE ALSO 1538.5 MOTION FILED 10-20-2004, BY MR. PLUMMER, EXHIBIT "D", PAGES 36, 37, 38, RTEXCERPTS, 0067, 0068, 0069, LINES 1-28 ON ALL 7 THE COURT (HON. JUDGE PRECKLE): SO I UNDERSTAND THAT YOU DON'T BELIEVE THAT YOU'RE BEING EFFECTIVELY REPRESENTED BY MR. PLUMMER. I NEED TO KNOW FACTS AND SPECIFICS THAT LEAD YOU TO THAT CONCLUSION. THE DEFENDANT: NO, I WOULD LIKE THOSE MOTIONS PULLED BECAUSE THEY ARE INSUFFICIENT, THE COURT: YOU WOULD LIKE THE MOTIONS WHAT? THE DEFENDANT: PULLED, THE 1538(5) MOTIONS THAT WERE FILED, -- INCORRECTLY. THEY WILL BE DEEMED INSUFFICIENT DUE TO THE FACT THAT ITEMS WERE NOT SPECIFICALLY LISTED PERTAINING TO ITEMS THAT WERE SEIZED.

I HAVE NOT AS YET AT THIS POINT, AFTER REQUESTING SEVERAL TIMES, TO HAVE RECEIPT OF THE PROPERTY THAT WAS SEIZED FROM ME. MY LIFE, MY PROPERTY HAVE BEEN SEIZED FROM ME UNLAWFULLY. IT WAS NOT MENTIONED IN THE FIRST MOTION THAT WAS SUBMITTED THAT PRIOR TO INTERROGATION THERE WAS ALSO AN ADDITIONAL 4TH AMENDMENT VIOLATION WHEREAS EVIDENCE WAS TAKEN FROM MY BODY, BELT, PANTS, SHIRT, SOCKS, SHOES, AND GLASSES WERE REMOVED FROM MY BODY, -- TAKEN AND PLACED WITH OTHER PROPERTY THAT WAS SEIZED, -- THAT VIOLATION OF THE 4TH AMENDMENT SHOULD HAVE BEEN MENTIONED IN THE MOTION BECAUSE IT WAS DONE WITHOUT WARRANT, AND ALSO THERE WAS A VIOLATION OF PENAL CODE 147 AS I BELIEVE PRIOR TO INTERROGATION, I WAS STRIPPED NAKED, PUT INTO A WHITE PAPER SUIT, BARE FOOT AND FREEZING AND PLACED IN THE ISOLATION CELL FOR APPROXIMATELY ONE HOUR PRIOR TO INTERROGATION.

THE COURT: YOU WERE UNDER ARREST DURING ALL OF THAT?  
THE DEFENDANT: I WAS PLACED IMMEDIATELY UNDER ARREST, YOUR HONOR, FROM THE POINT OF CONTACT WITH THE POLICE,  
THE COURT: GO AHEAD. THE DEFENDANT: THERE WAS STATEMENTS ENTERED ALSO IN THAT FIRST MOTION THAT WERE FALSE STATEMENTS THAT I SPECIFICALLY TOLD MY ATTORNEY, MR. PLUMMER, THAT I DID NOT MAKE, AFTER THE POLICE MADE DIRECT INCRIMINATING STATEMENTS, "WHERE IS --" OR QUESTION AND DIRECT INCRIMINATING QUESTION, "[?]" -- I STUCK TO MY RIGHT TO REMAIN SILENT. I SAID NOTHING, -- BEFORE INTERROGATION (AT THE POLICE STATION) I INVOKED MY 6TH AMENDMENT RIGHT TO COUNSEL IMMEDIATELY FOLLOWED BY MY 5TH AMENDMENT RIGHT TO REMAIN SILENT, MR. PLUMMER DID NOT MENTION THAT IN THE MOTION. HE OMITTED THAT -- AFTER I INVOKED (D) MY 5TH AMENDMENT RIGHT AND THE OFFICER INITIATED THE CONVERSATION, I DID NOT, I THEN AGAIN WAS QUESTIONED, -- A ROLE IN DENYING MY 1ST AMENDMENT RIGHT TO FREEDOM OF SPEECH AND EXPRESSION IN VIOLATION OF PENAL CODE 851(D). I WAS DETAINED PAST THREE HOURS, UPON MY IMMEDIATE REQUEST TO SPEAK TO MY ATTORNEY, I SHOULD HAVE BEEN ALLOWED TO CALL MY ATTORNEY, -- LIKE A SLAVE, SHACKLED AND BARE FOOT, PHOTO GRAPHS WERE TAKEN -- SINCE I AM BASICALLY A



U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA  
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CORCORAN, CA. 93212

LAYMAN IN THIS FIELD. SEE EXHIBIT "D", PAGE 37, REXCERPT 0068, LINES 21-27, SEE ALSO EXHIBIT "D", PAGE 38, REXCERPT 0069, LINES 1-7, 18-26. STATES "(MOTION FILED 10-20-04 BY MR. PLUMMER DEFENSE COUNSEL)" THIS MOTION CHALLENGES ALL PHYSICAL (AND INTANGIBLE) EVIDENCE SEIZED OR OBTAINED AS A RESULT OF THE DEPRIVATION OF THE LIBERTY OR RIGHT TO PRIVACY OF THE FOLLOWING PERSON: ERIC BURTON (DEFENDANT) -- THE COMPLAINED OF SEARCH AND SEIZURE VIOLATES DEFENDANT'S FOURTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION, -- MORE SPECIFICALLY, THIS MOTION IS BASED ON VIOLATION OF DEFENDANT'S REASONABLE EXPECTATION OF PRIVACY, AS GUARANTEED BY THE FOURTH, FIFTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ON THE FOLLOWING PARTICULAR GROUNDS: THE POLICE ACTION WAS WITHOUT A WARRANT, AND LACKED SUFFICIENT CAUSE TO JUSTIFY THE INVASION OF LIBERTY COMPLAINED OF; THE ARREST "OUTSIDE" DEFENDANT'S PLACE OF RESIDENCE WITHOUT A WARRANT; MEMORANDUM OF POINTS AND AUTHORITIES (ATTACHED TO THIS MOTION);

DATE: 10-19-04 RESPECTFULLY SUBMITTED, BY LEE PLUMMER, ATTORNEY AT LAW. ~~SEE EXHIBIT "D" PAGE 37, REXCERPT 0068, LINES 21-27, 27-28, 29-30, 31-32, 33-34, 35-36, 37-38, 39-40, 41-42, 43-44, 45-46, 47-48, 49-50, 51-52, 53-54, 55-56, 57-58, 59-60, 61-62, 63-64, 65-66, 67-68, 69-70, 71-72, 73-74, 75-76, 77-78, 79-80, 81-82, 83-84, 85-86, 87-88, 89-90, 91-92, 93-94, 95-96, 97-98, 99-100, 101-102, 103-104, 105-106, 107-108, 109-110, 111-112, 113-114, 115-116, 117-118, 119-120, 121-122, 123-124, 125-126, 127-128, 129-130, 131-132, 133-134, 135-136, 137-138, 139-140, 141-142, 143-144, 145-146, 147-148, 149-150, 151-152, 153-154, 155-156, 157-158, 159-160, 161-162, 163-164, 165-166, 167-168, 169-170, 171-172, 173-174, 175-176, 177-178, 179-180, 181-182, 183-184, 185-186, 187-188, 189-190, 191-192, 193-194, 195-196, 197-198, 199-200, 201-202, 203-204, 205-206, 207-208, 209-210, 211-212, 213-214, 215-216, 217-218, 219-220, 221-222, 223-224, 225-226, 227-228, 229-230, 231-232, 233-234, 235-236, 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459-460, 461-462, 463-464, 465-466, 467-468, 469-470, 471-472, 473-474, 475-476, 477-478, 479-480, 481-482, 483-484, 485-486, 487-488, 489-490, 491-492, 493-494, 495-496, 497-498, 499-500, 501-502, 503-504, 505-506, 507-508, 509-510, 511-512, 513-514, 515-516, 517-518, 519-520, 521-522, 523-524, 525-526, 527-528, 529-530, 531-532, 533-534, 535-536, 537-538, 539-540, 541-542, 543-544, 545-546, 547-548, 549-550, 551-552, 553-554, 555-556, 557-558, 559-560, 561-562, 563-564, 565-566, 567-568, 569-570, 571-572, 573-574, 575-576, 577-578, 579-580, 581-582, 583-584, 585-586, 587-588, 589-590, 591-592, 593-594, 595-596, 597-598, 599-600, 601-602, 603-604, 605-606, 607-608, 609-610, 611-612, 613-614, 615-616, 617-618, 619-620, 621-622, 623-624, 625-626, 627-628, 629-630, 631-632, 633-634, 635-636, 637-638, 639-640, 641-642, 643-644, 645-646, 647-648, 649-650, 651-652, 653-654, 655-656, 657-658, 659-660, 661-662, 663-664, 665-666, 667-668, 669-670, 671-672, 673-674, 675-676, 677-678, 679-680, 681-682, 683-684, 685-686, 687-688, 689-690, 691-692, 693-694, 695-696, 697-698, 699-700, 701-702, 703-704, 705-706, 707-708, 709-710, 711-712, 713-714, 715-716, 717-718, 719-720, 721-722, 723-724, 725-726, 727-728, 729-730, 731-732, 733-734, 735-736, 737-738, 739-740, 741-742, 743-744, 745-746, 747-748, 749-750, 751-752, 753-754, 755-756, 757-758, 759-760, 761-762, 763-764, 765-766, 767-768, 769-770, 771-772, 773-774, 775-776, 777-778, 779-780, 781-782, 783-784, 785-786, 787-788, 789-790, 791-792, 793-794, 795-796, 797-798, 799-800, 801-802, 803-804, 805-806, 807-808, 809-810, 811-812, 813-814, 815-816, 817-818, 819-820, 821-822, 823-824, 825-826, 827-828, 829-830, 831-832, 833-834, 835-836, 837-838, 839-840, 841-842, 843-844, 845-846, 847-848, 849-850, 851-852, 853-854, 855-856, 857-858, 859-860, 861-862, 863-864, 865-866, 867-868, 869-870, 871-872, 873-874, 875-876, 877-878, 879-880, 881-882, 883-884, 885-886, 887-888, 889-890, 891-892, 893-894, 895-896, 897-898, 899-900, 901-902, 903-904, 905-906, 907-908, 909-910, 911-912, 913-914, 915-916, 917-918, 919-920, 921-922, 923-924, 925-926, 927-928, 929-930, 931-932, 933-934, 935-936, 937-938, 939-940, 941-942, 943-944, 945-946, 947-948, 949-950, 951-952, 953-954, 955-956, 957-958, 959-960, 961-962, 963-964, 965-966, 967-968, 969-970, 971-972, 973-974, 975-976, 977-978, 979-980, 981-982, 983-984, 985-986, 987-988, 989-990, 991-992, 993-994, 995-996, 997-998, 999-1000~~ ~~SEE EXHIBIT "D" PAGE 38, REXCERPT 0069, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 39, REXCERPT 0070, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 40, REXCERPT 0071, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 41, REXCERPT 0072, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 42, REXCERPT 0073, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 43, REXCERPT 0074, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 44, REXCERPT 0075, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 45, REXCERPT 0076, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 46, REXCERPT 0077, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 47, REXCERPT 0078, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 48, REXCERPT 0079, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 49, REXCERPT 0080, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 50, REXCERPT 0081, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 51, REXCERPT 0082, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 52, REXCERPT 0083, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 53, REXCERPT 0084, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 54, REXCERPT 0085, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 55, REXCERPT 0086, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 56, REXCERPT 0087, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 57, REXCERPT 0088, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 58, REXCERPT 0089, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 59, REXCERPT 0090, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 60, REXCERPT 0091, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 61, REXCERPT 0092, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 62, REXCERPT 0093, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 63, REXCERPT 0094, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 64, REXCERPT 0095, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 65, REXCERPT 0096, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 66, REXCERPT 0097, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 67, REXCERPT 0098, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 68, REXCERPT 0099, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 69, REXCERPT 0100, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 70, REXCERPT 0101, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 71, REXCERPT 0102, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 72, REXCERPT 0103, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 73, REXCERPT 0104, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 74, REXCERPT 0105, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 75, REXCERPT 0106, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 76, REXCERPT 0107, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 77, REXCERPT 0108, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 78, REXCERPT 0109, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 79, REXCERPT 0110, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 80, REXCERPT 0111, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 81, REXCERPT 0112, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 82, REXCERPT 0113, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 83, REXCERPT 0114, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 84, REXCERPT 0115, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 85, REXCERPT 0116, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 86, REXCERPT 0117, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 87, REXCERPT 0118, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 88, REXCERPT 0119, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 89, REXCERPT 0120, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 90, REXCERPT 0121, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 91, REXCERPT 0122, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 92, REXCERPT 0123, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 93, REXCERPT 0124, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 94, REXCERPT 0125, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 95, REXCERPT 0126, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 96, REXCERPT 0127, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 97, REXCERPT 0128, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 98, REXCERPT 0129, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 99, REXCERPT 0130, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 100, REXCERPT 0131, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 101, REXCERPT 0132, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 102, REXCERPT 0133, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 103, REXCERPT 0134, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 104, REXCERPT 0135, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 105, REXCERPT 0136, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 106, REXCERPT 0137, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 107, REXCERPT 0138, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 108, REXCERPT 0139, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 109, REXCERPT 0140, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 110, REXCERPT 0141, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 111, REXCERPT 0142, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 112, REXCERPT 0143, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 113, REXCERPT 0144, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 114, REXCERPT 0145, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 115, REXCERPT 0146, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 116, REXCERPT 0147, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 117, REXCERPT 0148, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 118, REXCERPT 0149, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 119, REXCERPT 0150, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 120, REXCERPT 0151, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 121, REXCERPT 0152, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 122, REXCERPT 0153, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 123, REXCERPT 0154, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 124, REXCERPT 0155, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 125, REXCERPT 0156, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 126, REXCERPT 0157, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 127, REXCERPT 0158, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 128, REXCERPT 0159, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 129, REXCERPT 0160, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 130, REXCERPT 0161, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 131, REXCERPT 0162, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 132, REXCERPT 0163, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 133, REXCERPT 0164, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 134, REXCERPT 0165, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 135, REXCERPT 0166, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 136, REXCERPT 0167, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 137, REXCERPT 0168, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 138, REXCERPT 0169, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 139, REXCERPT 0170, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 140, REXCERPT 0171, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 141, REXCERPT 0172, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 142, REXCERPT 0173, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 143, REXCERPT 0174, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 144, REXCERPT 0175, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 145, REXCERPT 0176, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 146, REXCERPT 0177, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 147, REXCERPT 0178, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 148, REXCERPT 0179, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 149, REXCERPT 0180, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 150, REXCERPT 0181, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 151, REXCERPT 0182, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 152, REXCERPT 0183, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 153, REXCERPT 0184, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 154, REXCERPT 0185, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 155, REXCERPT 0186, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 156, REXCERPT 0187, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 157, REXCERPT 0188, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 158, REXCERPT 0189, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 159, REXCERPT 0190, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 160, REXCERPT 0191, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 161, REXCERPT 0192, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 162, REXCERPT 0193, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 163, REXCERPT 0194, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 164, REXCERPT 0195, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 165, REXCERPT 0196, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 166, REXCERPT 0197, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 167, REXCERPT 0198, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 168, REXCERPT 0199, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 169, REXCERPT 0200, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 170, REXCERPT 0201, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 171, REXCERPT 0202, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 172, REXCERPT 0203, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 173, REXCERPT 0204, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 174, REXCERPT 0205, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 175, REXCERPT 0206, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 176, REXCERPT 0207, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 177, REXCERPT 0208, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 178, REXCERPT 0209, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 179, REXCERPT 0210, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 180, REXCERPT 0211, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 181, REXCERPT 0212, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 182, REXCERPT 0213, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 183, REXCERPT 0214, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 184, REXCERPT 0215, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 185, REXCERPT 0216, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 186, REXCERPT 0217, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 187, REXCERPT 0218, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 188, REXCERPT 0219, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 189, REXCERPT 0220, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 190, REXCERPT 0221, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 191, REXCERPT 0222, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 192, REXCERPT 0223, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 193, REXCERPT 0224, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 194, REXCERPT 0225, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 195, REXCERPT 0226, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 196, REXCERPT 0227, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 197, REXCERPT 0228, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 198, REXCERPT 0229, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 199, REXCERPT 0230, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 200, REXCERPT 0231, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 201, REXCERPT 0232, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 202, REXCERPT 0233, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 203, REXCERPT 0234, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 204, REXCERPT 0235, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 205, REXCERPT 0236, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 206, REXCERPT 0237, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 207, REXCERPT 0238, LINES 1-7, 18-26~~ ~~SEE EXHIBIT "D" PAGE 208, REXCERPT 0239, LINES 1-~~



MR. E. W. BURTON #402720 IN PROCEED  
 P.O. BOX 5246 COATD/FSA-CI-132L  
 COA CO. W. CA. 92212  
 STATEMENT OF FACTS

~~MATERIAL EXCULATORY EVIDENCE TO THE DEFENSE AFTER~~  
 A DISCOVERY MOTION WAS FILED BY DEFENSE ON 30 JULY 04,  
 VIOLATED PETITIONER'S FEDERALLY GUARANTEED U.S. CONSTITUTIONAL  
 RIGHTS, IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION  
 CLAUSES OF THE 5TH AND 14TH AMENDMENTS, PETITIONER'S  
 FUNDAMENTAL RIGHTS TO A FAIR TRIAL WAS VIOLATED BY THE  
 TRIAL COURT. SEE EXHIBIT "B" PAGE 48, RT. EXCERPT 1051, LINES,  
 20, 23-28. ONE OF THE THINGS I STILL HAVE TO DO-- COME--  
 SOME EVIDENCE IN THERE, IF I CAN FIND IT-- WHAT MAYBE--  
 IN THERE IS, LIKE, A LIST OF CASES AGAINST MR. THOMAS  
 THAT MY CLIENT HAS RESERVED. I WOULD BE INTRODUCING  
 THAT AT 1:30. I SUPPOSE, BUT WE'VE TALKED ABOUT GOING  
 INTO THE BACK PACK BUT I JUST HAVEN'T HAD THE TIME TO  
 DO IT. SEE NOW EXHIBIT "E", PAGE 25, RT. EXCERPT 0379, DATED 7-27-05,  
 SEC 11:55 AM; THE PEOPLE INDICATE THAT THEY OBJECT TO THE POSSIBILITY  
 THAT THE DEFENSE MAY HAVE TESTIMONY RELATING TO A BACKPACK  
 FOUND IN THE DEFENDANT'S CAR AS IT WAS NEVER IDENTIFIED AS  
 BEING THE DEFENDANT'S. THE COURT RESERVES ON THIS ISSUE,  
 SEE SAME RT. EXCERPT 0379, AT 11:30; COURT IS AGAIN IN SESSION WITH ALL  
 COUNSEL AS PREVIOUSLY NOTED AND THE DEFENDANT IS PRESENT. DEFENSE  
 COUNSEL REQUEST THAT HE BE PERMITTED TO EXAMINE THE BACKPACK  
 (ALLEGEDLY) FOUND IN THE DEFENDANT'S CAR. THE COURT GRANTS  
 THAT REQUEST. SEE SAME RT. EXCERPT 0379 AT 2:32 PM; -- OUT OF  
 THE PRESENCE OF THE JURORS, THE DEFENSE PRESENTS SOME  
 ADDITIONAL DOCUMENTS (APPLICATION FOR RESTRAINING ORDER  
 MRS. SANDERS OBTAINED AGAINST MR. THOMAS) THAT THEY WOULD  
 LIKE TO INTRODUCE INTO EVIDENCE, THE COURT RULES THAT  
 THESE DOCUMENTS MAY BE MARKED AS AN EXHIBIT, BUT  
 IS NOT ADMISSIBLE AND WILL NOT BE RECEIVED.  
 SEE EXHIBIT "B" PAGE 49, RT. EXCERPT 1109, LINES 1-11, 18, 19, 21-25  
 MR. ADAM THE ORIGINALS THAT WERE TAKEN OUT OF MR. BURTON'S  
 (ALLEGED) BACKPACK. THEY INDICATE -- AT LEAST MOST OF  
 THEM ARE RESTRAINING ORDERS, IN FACT,

MR. BURTON WENT TO IN PROPER  
P.O. BOX 5246 - SATFISPC-1-132L  
CORCORAN CA 93212

WE WOULD BE INTRODUCING ALL OF THOSE INTO EVIDENCE TO SHOW SOME KNOWLEDGE BY MR. BURTON OF THOMAS' TENDENCIES TOWARDS VIOLENCE AND ABUSE, THE COURT: ALL RIGHT, AND FOR THE RECORD, -- MR. TROCHA, YOUR RESPONSE? MR. TROCHA: -- ORDER IN CONJUNCTION WITH THE DOMESTIC VIOLENCE CASE OF 2000 -- THE INCIDENT FROM 2000 -- THE EFFECT THOSE DOCUMENTS HAD -- UPON HIS PSYCHE -- WANTS TO BRING IN THESE DOCUMENTS -- IN ORDER FOR THE JURY TO ACCEPT THAT HE THOUGHT OF THESE SAME DOCUMENTS -- "AND HE SHOULD HAVE SEEN THESE DOCUMENTS PROBABLY AT THE BEGINNING OF TRIAL AS OPPOSED TO RIGHT NOW THEY ARE, (SEE EXHIBIT "B", PAGE 50, A.T. EXCERPT III, LINES 5, 6, 9, 12, 16, 19, 20, 21, 22, 27, 28, SEE ALSO, EXHIBIT B, PAGE 51, A.T. EXCERPT III, LINES 1, 2-6, 8, 9, 16, 19-22, 24-28.) -- DOCUMENTS -- AGAIN, THE DEFENDANT, SINCE HE'S NOW CLAIMING HE KNEW OF THESE DOCUMENTS, "SHOULD HAVE BEEN AVAILABLE" -- TIME, BUT APPARENTLY THE EFFECT -- MR. ADAIR: YOUR HONOR, -- THEY'RE BEING OFFERED TO SHOW THAT THIS INFORMATION THAT MR. BURTON WAS AWARE OF -- "HAD THE DOCUMENTS APPARENTLY TAKEN FROM A COURT FILE -- AND I THINK IT'S CERTAINLY RELEVANT EVIDENCE AS TO HIS STATE OF MIND, THE COURT: ALL RIGHT, WELL, I'VE LOOKED AT THE DOCUMENTS, -- PHOTO COPIES OF INCIDENTS THAT OCCURED IN 2000 AND 1997. IT WOULD BE -- WERE IN THE BACK PACK, -- EXTENT MR. BURTON WAS AWARE OF THEM, -- IN THAT THEY'RE, YOU KNOW -- OCCURED QUITE SOME TIME BEFORE, WHEN MS. SANDERS WAS -- IT WILL NOT BE RECEIVED, YOU CAN HAVE IT MARKED AS DEFENSE'S NEXT IN ORDER FOR THE RECORD, BUT NOT AS ADMISSIBLE EVIDENCE. MR. ADAIR: WELL, AMONG OTHER THINGS, IT INDICATES THAT MR. BURTON WOULD KNOW MR. THOMAS WAS ON PAROLE. I THINK THAT'S RELEVANT INFORMATION INDICATING THAT A PERSON MIGHT BELIEVE THAT MR. ~~BURTON~~ THOMAS WAS DANGEROUS, THAT HE HAD BEEN TO PRISON -- BUT WHETHER MR. BURTON WAS AWARE OF SOME OF THOSE THINGS OR THE ALLEGATIONS AND HAD A REASONABLE FEAR OF MR. THOMAS, THE COURT: WELL, AGAIN, A PERSON COULD BE ON -- BE VIOLENCE, AND, -- I THINK IT'S -- WHAT MR. BURTON KNEW ABOUT THEM -- SO IT WILL BE MARKED AS DEFENSE F FOR THE RECORD, BUT NOT RECEIVED.

MA. NEW BOSTON #F 2730 T. H. P. O. A.  
P.O. Box 5246 - C SATFISPC 1-132L  
CORCORAN, CA. 93212

STATEMENT OF FACTS

PETITIONER WAS STANDING IN THE THRESHOLD OF HIS APARTMENT MANAGER'S DOORWAY UNIT 6 AT 425 E. MAIN ST. IN EL CAJON, CA. 92020, ALLEGED TO BE MAKING A PHONE CALL, HOWEVER NO PHONE WAS EVER IN PETITIONER'S HANDS, OR OTHERWISE IN HIS POSSESSION ON 19 MARCH 04. PETITIONER'S APARTMENT UNIT WAS UNIT #5 AT 425 E. MAIN STREET IN E.C. CA. 92020. WHILE STANDING AT THE THRESHOLD OF HIS RESIDENTIAL MANAGERS DOORWAY IN A PRIVATE DWELLING AREA, WHERE HE HAD A REASONABLE EXPECTATION, AGAINST POLICE, UNCONSTITUTIONAL INTRUSION, AND UNREASONABLENESS, IN A PRIVATE RESIDENTIAL LIVING AREA, NOT IN PUBLIC VIEW. THE POLICE EXCEEDING THE TERRY LINE OF AUTHORITY, SEIZED PETITIONER'S PERSON WITH UNREASONABLE, EXCESSIVE, INTRUSIVE FORCE, AS HE WASN'T IN POSSESSION OF ANY WEAPONS. THE OFFICER'S INTRUSION WAS WARRANTLESS, AFTER SEIZING PETITIONER'S PERSON, HANDCUFFING HIM, ARRESTING HIM, PUT HIM INSIDE A PATROL VEHICLE WITHIN SECONDS OF INITIAL CONTACT WITH PETITIONER, INDICATING IN NO WAY WAS HE FREE TO LEAVE, AND WITHOUT WARRANT AND WITHOUT CONSENT, SEARCHED PETITIONER'S HOME, OF WHICH HE HAD NOT OCCUPIED. POLICE DISCOVERED ANOTHER BLACK MALE INSIDE UNBERKNOWSTED TO PETITIONER. PETITIONER'S APARTMENT MANAGER MR. HELSEL WAS PRESENT, AND AN EYE WITNESS TO THE POLICE'S UNLAWFULLY, SEIZURE OF PETITIONER'S PERSON, INVASION OF HIS HOME, SEIZURE AND SEARCH THERE OF AND THE SEARCH AND UNCONSTITUTIONAL SEIZURE WITHOUT WARRANT OF PETITIONER'S VEHICLE PARKED ON THE CURTILAGE OF PETITIONER'S HOME. NOW SEE TESTIMONY DIRECT EXAMINATION BY MS. HANNAH. D.A. —



MR. W. BURTON #52720 FWD PROPER  
P.O. BOX 5246 - CATHIPS - CI-132L  
COR CORAN, CA 93212

1 ~~THERE WITH HIM? A. THE ENTIRE TIME HE WAS IN PATROL CAR?~~ Eno/Exh

2 ~~Q. YES. A. I DON'T RECALL. Q. WERE THE WINDOWS DOWN IN YOUR~~ Eno/Exh

3 ~~PATROL CAR? A. -- BUT I CAN'T SPECIFICALLY RECALL THAT DAY.~~ Eno/Exh

4 ~~Q. AND I BELIEVE YOU TESTIFIED THAT YOU'VE WALKED MR. BURTON~~ Eno/Exh

5 ~~TO THE PATROL VEHICLE, CORRECT? A. CORRECT. Q. WHEN DID YOU~~ Eno/Exh

6 ~~WRITE YOUR REPORT ON THIS INCIDENT? A. I WOULD HAVE WRITTEN~~ Eno/Exh

7 ~~IT THAT AFTERNOON. Q. BUT WITHIN WHAT, A COUPLE OF HOURS AFTER~~ Eno/Exh

8 ~~THE EVENTS TOOK PLACE? A. CORRECT. Q. AND I BELIEVE YOU~~ Eno/Exh

9 ~~TESTIFIED TO THE FACT THAT YOU NEVER HEARD OR DID YOU EVER HEAR~~ Eno/Exh

10 ~~AGENT KIRK TALKING TO MR. BURTON? A. YES. I DID. Q. WHAT WAS~~ Eno/Exh

11 ~~SAID? A. THE PORTION THAT I HEARD WAS HIM ASKING MR. BURTON WHERE~~ Eno/Exh

12 ~~THE (ALLEGED) WEAPON WAS. SEE EXHIBIT "D", PAGE 53, RTEXCERPT 90, LINES,~~ Eno/Exh

13 ~~10-12, 20-27, SEE ALSO EXHIBIT "D", PAGE 54, RTEXCERPT 91, LINES 7-12, 17-19,~~

14 ~~25-28, SEE EXHIBIT "D", PAGE 55, RTEXCERPT 92, LINES 17-24, SEE EXHIBIT "D"~~

15 ~~PAGE 56, RTEXCERPT 93, LINES 2-10, 16-18, 21-28, SEE EXHIBIT "D", PAGE~~

16 ~~57, RTEXCERPT 94, LINES 1-8, 25-28. SEE EXHIBIT "D", PAGE 58, RTEXCERPT~~

17 ~~95, LINES 1-4, 7, 8, 12-15, 22, 25-28. SEE EXHIBIT "D", PAGE 59, RTEXCERPT~~

18 ~~96, LINES 1-7, 9, 10, 14, 15, 19-28, SEE EXHIBIT "D" PAGE 60, RTEXCERPT 98,~~

19 ~~LINES 4, 5, 7, 8, 12-19, SEE EXHIBIT "D", PAGE 61, RTEXCERPT 100, LINES 2-25.~~

20 ~~SEE EXHIBIT "D" PAGE 62, RTEXCERPT 101, LINES 13-28.~~

21 ~~BY MR. ADAIR: Q. MR. HELSEL, DO YOU KNOW ERIC BURTON? A. YES I DO.~~

22 ~~Q. MR. HELSEL, COULD YOU INDICATE IN WHAT CONTEXT YOU KNOW MR.~~

23 ~~BURTON? IN OTHER WORDS, DO YOU LIVE -- A. I'M A PROPERTY MANAGER~~

24 ~~FOR QUINN PROPERTY MANAGEMENT COMPANY IN SAN DIEGO, AND HE RENTED A~~

25 ~~PROPERTY FROM US OUT IN EL CAJON, 425 EAST MAIN, APARTMENT 5. Q. WERE~~

26 ~~YOU PRESENT LAST YEAR AT A TIME WHEN HE WAS ARRESTED? A. YES.~~

27 ~~Q. COULD YOU EXPLAIN TO US WHAT YOU SAW OR HEARD? WHAT WAS THE~~

28 ~~FIRST THING THAT YOU NOTICED THAT SEEMED UNUSUAL. MS. HANNAH: OBJECTION.~~



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LEADING, THE COURT: OVERRULED, YOU CAN ANSWER, JUST TELL US WHAT HAPPENED, WHAT YOU SAW, THE COURT: WHERE IS THIS IN RELATION TO YOUR APARTMENT? THE WITNESS (MR. HELSEL) I'M IN 6. THE COURT: ALL RIGHT, GO AHEAD MR. ADAIR, BY MR. ADAIR: Q. COULD YOU TELL US HOW MANY UNITS ARE IN THAT? A. THERE'S SIX. Q. HOW FAR AWAY FROM YOU WAS HE AT THE TIME THAT THE OFFICERS ARRESTED HIM? A. HE WAS RIGHT IN FRONT OF ME AT FIRST, THEN THEY MADE HIM STEP OUT, LAY DOWN ON THE BLACK TOP, PUT HIS HANDS BEHIND HIM. Q. HOW FAR WAS HE AWAY FROM YOU AT THE TIME HE WAS LAID DOWN ON THE BLACKTOP? A. TEN FEET. Q. WERE YOU STILL WATCHING AT THAT POINT? A. PRETTY MUCH SO, YES. Q. COULD YOU TELL US THE NEXT THING THAT YOU SAW OR HEARD, A. "THE YOUNG MAN KEPT OPENING THE DOOR IN APARTMENTS, AND THE ATTENTION WAS DRAWN, THE OFFICER SAW THAT, SO HE WENT OVER THERE AND KNOCKED ON THE DOOR BECAUSE THE KID CLOSED THE DOOR AS HE CAME UP, HE OPENED THE DOOR, AND I GUESS THEY WANTED ACCESS AND THE KID WOULDN'T LET HIM -- Q. LET ME INTERRUPT FOR A SECOND AND ASK YOU HOW FAR AWAY FROM YOU WAS THE POLICE CAR THAT MR. BURTON A. THE POLICE CAR WAS 20 FEET PLUS MAYBE 25, Q. WAS THE NEXT THING THAT HAPPENED? A. I'M NOT SURE WHETHER THE OFFICERS CHANGED OR THE OFFICER, IT'S BEEN AWHILE, ANYHOW, ONE OF THE OFFICERS WENT INTO THE UNIT, BROUGHT THE KID OUTSIDE, AND THEY HAD SOMETHING WITH HIM, -- BUT I DIDN'T SEE IT BECAUSE IT WAS WRAPPED. Q. WERE THEY CARRYING SOMETHING THAT WAS WRAPPED? A. SOMETHING, YES. Q. DID YOU HEAR ANY PART OF THE CONVERSATION BETWEEN MR. BURTON AND THE POLICE OFFICERS AFTER HE WAS PUT INTO -- MR. MR. BURTON WAS PUT INTO THE POLICE CAR? A. NO, ONCE HE WAS IN THE CAR, HE WAS TOO FAR AWAY FROM ME, I KNOW BETTER THAN TO APPROACH THE CAR WHEN SOMEBODY IS IN CUSTODY.

MALE BURTON FROM THE PROSECUTOR  
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1 STAY OUT OF IT. MR. ADAIR: COULD I HAVE A MOMENT, YOUR HONOR?

2 THE COURT: SURE. BY MR. ADAIR: Q MR. HOW HOLD, COULD YOU DESCRIBE  
3 TO THE COURT THE APARTMENT COMPLEX THAT YOU WERE THE MANAGER  
4 OF, THE ONE WE HAVE BEEN TALKING ABOUT? A. THERES SIX UNITS  
5 IN AN "L" PATTERN. FIRST THERE'S A ONE BEDROOM, AND THEN THERE'S A  
6 STUDIO AND THEN THERE'S A LAUNDRY FACILITY AND THEN THERE'S A  
7 GARAGE AND THEN THERE'S ANOTHER TWO STUDIOS, AND HIS WAS IN  
8 THE CORNER. Q. HOW FAR AWAY FROM YOUR UNIT WAS HIS UNIT?

9 A. ~~25 MORE FEET~~ 25 FEET MORE. Q. WHEN MR. BURTON WAS  
10 ARRESTED BY THE POLICE, WAS HE IN THE PARKING LOT AREA? A. HE  
11 WAS STANDING RIGHT IN FRONT OF MY UNIT. HE WAS TALKING TO ME  
12 WHEN THEY DROVE UP. Q. SO THERE'S NO GARDEN OR ANYTHING LIKE  
13 THAT. A. THEY HAVE PLANTS AND SHRUBBERY OUT IN FRONT OF EACH UNIT.

14 Q. HOW ABOUT HOW FAR FROM THE UNITS? A. WELL, IT'S LOW BELOW  
15 THE WINDOW. THE FLOWERS ARE BELOW THE WINDOW Q THE PARKING  
16 LOT IS SHARED WITH THE GRAND BAR? A. NO. THE GRAND HAS THEIR SIDE.  
17 I HAD DESIGNATED FOR TENANTS OVER THERE. -- THE PEOPLE IN THE BAR  
18 KNEW BECAUSE I WOULD TELL ALEX AND JASON, WHO WERE THE OWNERS  
19 OF THE BUSINESS, MR. ADAIR: MAY I HAVE ONE MOMENT, YOUR HONOR.

20 Q. WHEN THE POLICE ARRESTED HIM (MEANING MR. BURTON) A. "HE WAS STANDING  
21 IN FRONT OF MY UNIT, NO. 6. Q. YEAH. A. HE WAS STANDING RIGHT THERE. MR. ADAIR:  
22 COULD I HAVE A MOMENT, YOUR HONOR? NO FURTHER QUESTIONS, YOUR HONOR. THANK YOU.

23 THE COURT: ALL RIGHT. MISS HANNAH, CROSS EXAMINATION, MS. HANNAH. THANK YOU, YOUR  
24 HONOR. CROSS EXAMINATION- BY MS. HANNAH: Q. MR. HELSEL? A. YES. Q. DID YOU  
25 SEE MR. BURTON MAKE A PHONE CALL? A. -- I DON'T REMEMBER.

26 Q. WHEN THE POLICE ARRIVED- A. WE WERE TALKING AND WE WERE  
27 EXCHANGING SOME DIALOGUE, ALL OF A SUDDEN THERE THEY WERE.

28 Q. WHEN THE POLICE ARRIVED, DID THEY CONTACT THE DEFENDANT? A. -

MR. E. BURTON (DEFENDANT)  
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1 OH, YES, Q. AND DID YOU OBSERVE THIS OCCURING? A. YES, RIGHT  
2 IN FRONT OF ME, MS. HANNAH I THANK YOU, NOTHING FURTHER, THE COURT,  
3 MR. ADAIR, DO YOU HAVE ANY FURTHER QUESTIONS? MR. ADAIR: BRIEFLY  
4 YOUR HONOR, (REDIRECT EXAMINATION) BY MR. ADAIR: Q. MR. HELSEL, WHEN  
5 THE POLICE ARRIVED, DID THEY HAVE THEIR GUNS OUT? A. YES, Q. AND  
6 THEY HAD THEIR GUNS OUT UNTIL MR. BURTON WAS HANDCUFFED?  
7 A. YES. MR. ADAIR: THANK YOU VERY MUCH, THE COURT, THIS ALL  
8 HAPPENED PRETTY QUICKLY ONCE THE POLICE ARRIVED ON THE SCENE?  
9 A. PRETTY QUICK, Q. THEY TOOK HIM DOWN AT GUNPOINT, THEY PRONED  
10 HIM OUT ON THE GROUND? A. YES, BUT HE WASN'T FIGHTING OR  
11 ANYTHING, THE COURT: UNDERSTOOD, Q. HOW LONG WOULD YOU  
12 ESTIMATE HE WAS ON THE GROUND BEFORE THEY ESCORTED HIM TO  
13 ONE OF THE PATROL CARS? A. --15, 20 SECONDS, 30 SECONDS,  
14 Q. DO YOU RECALL ANY CONVERSATION-- HEARING ANY CONVERSATION  
15 ABOUT SEARCHING MR. BURTON'S APARTMENT OR HIS VEHICLE OR  
16 BOTH? A. NO, I DIDN'T HEAR ANYTHING. THE COURT: COUNSEL  
17 ANYTHING FURTHER BASED UPON THE COURT'S INQUIRIES? MR. ADAIR: NO,  
18 YOUR HONOR, THE COURT: MISS HANNAH? MS. HANNAH, NO, THE COURT: ALL  
19 RIGHT, MR. HELSEL, THANK YOU VERY MUCH FOR BEING WITH US, YOU MAY  
20 STEP DOWN, YOU'RE FREE TO GO, SEE NOW EXHIBIT "D", PAGE 65, RTEKCEPT,  
21 714, LINES 18-28, SEE ALSO EXHIBIT "D", PAGE 66, RTEKCEPT 716, LINES,  
22 6-16, 1, 19-25, SEE EXHIBIT D, PAGE 67, RTEKCEPT 717, LINES 5-13,  
23 SEE EXHIBIT "D" PAGE 64, RTEKCEPT 713, LINES, 5, 6, 7, 11-15, 17, 18, 19.  
24 MR. TROCHA: (OFFICER HOLMES, TRIAL TESTIMONY) Q. WERE YOU ON DUTY  
25 BACK ON MARCH 19TH OF LAST YEAR? (04) A. YES, I WAS, Q. DID YOU RECEIVE  
26 A CALL TO REPORT TO AN ADDRESS ON 425 EAST MAIN STREET? A. YES, I  
27 DID, Q. AND THAT IS WITHIN EL CAJON? A. CORRECT, Q. AND THAT'S  
28 OF COURSE, WITHIN THE COUNTY OF SAN DIEGO? A. YES.

Q. WERE YOU ABLE TO ASSOCIATE -- WHAT TYPE OF STRUCTURES, IF ANY, ARE AT THIS ADDRESS? A. IT IS AN APARTMENT BUILDING. Q. WERE THERE ANY VEHICLES IN THE PARKING LOT? A. YES, THERE WERE. Q. WERE YOU ABLE TO IDENTIFY ONE THAT BELONGED TO MR. BURTON? A. YES, I DID. Q. AND WHAT TYPE OF VEHICLE WAS THAT? A. -- THE MODEL ESCAPES ME AT THIS POINT IN TIME. Q. WERE THERE ANY ITEMS IN OR AROUND THE VEHICLE THAT YOU LATER SEIZED? A. YES. Q. WHAT WERE THOSE ITEMS? A. THERE WAS PAPER WORK ON TOP OF A BLACK BACKPACK, -- WHICH ENVELOPS AND I COLLECTED THAT. Q. -- DID YOU PLACE MR. BURTON UNDER ARREST? A. I DID. Q. WAS HE TRANSPORTED TO THE EL CAJON POLICE DEPARTMENT THEN? A. YES. Q. AT THE EL CAJON POLICE DEPARTMENT, DID YOU HAVE THE OPPORTUNITY TO SEIZE AND IMPOUND HIS CLOTHING? A. YES, I DID. Q. AND HOW WOULD YOU GO ABOUT DOING SOMETHING LIKE THAT? A. -- THEN WE WOULD HAVE THE PERSON REMOVE EACH ITEM OF CLOTHING SEPARATELY -- AND AFTER ALL THE CLOTHING IS COLLECTED, WE ISSUE THEM A PAPER SUIT, WHICH THEY WOULD THEN WEAR. Q. IS THIS STANDARD PROCEDURE IN EVERY TYPE OF CASE? A. -- NO. SEE EXHIBIT "D", PAGE 69, RT. EXCERPT 44, LINES 26-28, SEE ALSO EXHIBIT "D", PAGE 70, RT. EXCERPT 45, LINES 3-7, 21-26, 28. SEE EXHIBIT "D", PAGE 71, RT. EXCERPT 46, LINES 1-17, 19, 20, 21-26. SEE ALSO EXHIBIT "D", PAGE 72, RT. EXCERPT 47, LINES 14 AND 21, SEE EXHIBIT "D", PAGE 73, RT. EXCERPT 48, LINES 3, 9, 10, 12, SEE EXHIBIT "D", PAGE 74, RT. EXCERPT 49, LINES 6-14, SEE EXHIBIT "D", PAGE 75, RT. EXCERPT 50, LINES 9-11, 25, 26. BY MS. HANNAH: Q. AGENT KIRK, WHERE ARE YOU EMPLOYED? A. POLICE DEPARTMENT IN THE CITY OF EL CAJON. Q. HOW LONG HAVE YOU BEEN SO EMPLOYED? A. 15 YEARS. Q. WERE YOU ON DUTY ON MARCH 19TH OF THE YEAR 2004? A. YES, MA'AM I WAS. Q. DID YOU RESPOND TO A LOCATION OF 425 EAST MAIN STREET? A. YES, MA'AM. THE COURT: PROCEED, BY MS. HANNAH: Q. WHEN YOU ARRIVED AT THAT LOCATION, WHAT DID YOU FIND? A. OFFICER HOLMES AND



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1 SERGEANT COIT WERE ALREADY ON THE SCENE. THERE WERE TWO BLACK MALES.  
2 I BELIEVE, AT THAT-- BELIEVE IT WAS A FOUR DOOR, SITTING IN A PARKING SPOT  
3 RIGHT IN FRONT OF APARTMENT NO. 5. Q. AND YOU RECALL WHETHER OR NOT THERE WERE  
4 ANY OTHER OFFICERS AT THE SCENE WHEN YOU ARRIVED OTHER THAN AGENT COIT AND  
5 OFFICER HOLMES OR SERGEANT, EXCUSE ME, COIT? A. THAT'S ALL I REMEMBER  
6 WHEN I ARRIVED. I KNOW Q. WHEN YOU ARRIVED AT THE SCENE, DID THE  
7 OTHER OFFICERS HAVE THEIR GUNS OUT OR ANYTHING OF THAT NATURE?  
8 A. OFFICER HOLMES HAD HIS GUN OUT, YES. Q. DID YOU EVENTUALLY SEE  
9 OFFICER HOLMES OR ONE OF THE OFFICERS PLACE ONE OF THE  
10 BLACK MALES INTO HAND CUFFS? A. YES, I DID. Q. DO YOU SEE THE PERSON  
11 THAT HE PLACED INTO HAND CUFFS IN THE COURTROOM TODAY? A. YES Q.  
12 CAN YOU POINT THAT INDIVIDUAL OUT AS TO WHERE A. HE'S SITTING AT THE  
13 DEFENSE TABLE-- THE BLACK MALE. THE COURT: IDENTIFYING THE DEFENDANT,  
14 MR. BURTON. BY MS. HANNAH: Q. AFTER THE DEFENDANT WAS PLACED INTO HANDCUFFS,  
15 DID YOU HAVE A CONVERSATION WITH THE DEFENDANT? A. A SHORT CONVERSATION,  
16 YES. Q. WHAT WAS THE NATURE OF THAT CONVERSATION? Q. WHEN YOU ASKED  
17 HIM ABOUT THE (ALLEGED) WEAPON, ABOUT A. A. I ASKED HIM WHERE THE (ALLEGED)  
18 WEAPON WAS, A. I ASKED HIM WHERE THE (ALLEGED) GUN WAS HE USED IN THE,  
19 MR. ADAIR: OBJECTION, YOUR HONOR. LEADING. THE COURT. OVERRULED. BY MS. HANNAH:  
20 Q. APPROXIMATELY WHERE WERE YOU STANDING IN REFERENCE TO THE DEFENDANT  
21 WHEN YOU HAD THIS EXCHANGE? A. I WAS STANDING PROBABLY ABOUT FIVE  
22 OR SIX FEET AWAY FROM HIM. Q. WHERE WAS THE DEFENDANT POSITIONED WHEN  
23 YOU WERE ASKING THESE QUESTIONS? A. HE WAS STILL IN THE PARKING  
24 LOT. Q. WAS HE STANDING? WAS HE SITTING? A. I BELIEVE HE WAS  
25 SITTING Q. WHEN YOU WENT INTO THE APARTMENT, DID YOU FIND  
26 ANYTHING? A. YES I DID. Q. DID YOU SEARCH THE REST OF THE APARTMENT?  
27 A. YES, I DID. SEE NOW. EXHIBIT "D," PAGE 76, RT. EX CERPT 51, LINES 5, 6, 13, 15-17, 26-  
28 28, SEE ALSO EXHIBIT "D," PAGE 77, RT EX CERPT 52, LINES, 1, 4-28. SEE EXHIBIT "D" PAGE 78,

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1 RTEXCERPT 53, LINES 1, 2, 3, 5, 6, 21, 24, 25, 27, 28. SEE ALSO, EXHIBIT "D", PAGE 19,  
2 RT. EXCERPT 54, LINES 1, 2, 5, 6, 8-20, 22-24, ENVOIR 12-20, 22, 23, 24. SEE EXHIBIT  
3 "D", PAGE 80, RTEXCERPT 55, LINES 2-28, SEE AS WELL, EXHIBIT "D" PAGE, 81, RT,  
4 EXCERPT 56, LINES 1-14. Q. DID YOU SEARCH THE DEFENDANT'S VEHICLE? A. YES,  
5 I DID. (AGENT KIRK) Q. AND DID YOU FIND ANYTHING INSIDE OF THE VEHICLE? A. YES,  
6 I DID. Q. WAS THE DEFENDANT STILL PRESENT WHEN YOU SEARCHED THE  
7 VEHICLE? A. -- I THINK HE HAD BEEN PLACED IN A VEHICLE. Q. AGENT KIRK, YOU  
8 INDICATED THAT YOU DID SEARCH THE DEFENDANTS CAR; CORRECT? A. YES ~~Q. YES~~  
9 ~~DID YOU FIND ANYTHING OF NOTE THAT YOU FOUND OF ENVOIR B.~~ Q. WHERE  
10 SPECIFICALLY INSIDE THE VEHICLE DID YOU FIND THESE ITEMS? A. THEY WERE  
11 INSIDE -- A BLACK POUCH INSIDE THE GLOVE BOX. Q. DID YOU ALSO  
12 PHOTOGRAPH THESE ITEMS? A. YES I DID. Q. AND THEN DID YOU TAKE THESE  
13 ITEMS INTO CUSTODY OR INTO EVIDENCE? A. YES I DID. MS. HANNAH: THANK  
14 YOU. NOTHING FURTHER. (CROSS EXAMINATION) BY MR. ADAIR: Q. AGENT KIRK --  
15 THE COURT: MR. ADAIR, GO AHEAD. BY MR. ADAIR: Q. GOOD MORNING, A. GOOD  
16 MORNING, SIR. Q. AGENT KIRK, IT APPEARS IN THIS CASE THAT YOU BASICALLY  
17 COLLECTED EVIDENCE? A. YES, I DID. Q. TOOK PHOTOGRAPHS? A. YES, SIR. Q. ALL  
18 RIGHT, IS THAT -- WAS THAT YOUR RESPONSIBILITY ON THIS PARTICULAR  
19 INCIDENT? A. YES, IT WAS. Q. IS THAT WHAT YOU -- THE FUNCTION THAT  
20 YOU NORMALLY PERFORM FOR THE EL CAJON POLICE DEPARTMENT? A. IT'S  
21 ONE OF MY FUNCTIONS, YES. Q. ARE YOU ALSO A PATROL OFFICER OR --  
22 A. WELL, AT THAT TIME I WAS ACTUALLY ACTING SERGEANT. Q. AT THE  
23 TIME THAT YOU ARRIVED ON THE SCENE, WAS MR. BURTON HAND CUFFED? ~~A. I~~ ~~DO NOT~~ ~~REMEMBER~~  
24 ~~BELIEVE.~~ ~~ENVOIR B.~~ A. HE WAS IN THE PROCESS OF BEING HAND CUFFED, I  
25 BELIEVE. Q. SO YOU WERE THERE FAIRLY QUICKLY; CORRECT? A. YES, SIR.  
26 Q. DO YOU REMEMBER A SECOND INDIVIDUAL BEING THERE ON THE SCENE  
27 THAT WAS NOT A POLICE OFFICER? A. YES. Q. AND WHO WAS THAT OTHER  
28 PERSON? A. I

SEE EXHIBIT "D", PAGE 31 R.T. EXCERPT 721, LINES, 24-28.

MR. ADAIR: I GUESS THERE'S AN ISSUE AS TO WHETHER I  
WOULD BE ABLE TO ILLICIT RELEVANT EVIDENCE AS TO THE  
ALLEGED VICTIM'S (MR. THOMAS AND MR. KIAN MINKEY?) TENDENCIES  
TO VIOLENCE, THE COURT: I THINK YOU'VE ELICITED AMPLE --  
MR. TROCHAI: HE'S ADMITTED -- (MC-

1 STATEMENTS OF FACTS PETITIONER CONTENDS - THAT THE TRIAL COURT'S DENIAL OF HIM AND  
2 HIS COUNSEL DENIED 14TH DUE PROCESS AND ALSO DENIED HIS DUE PROCESS RIGHT TO DISCOVERY,  
3 SEE EXHIBIT "B", PAGE 59, R.T. EXCERPT 175, LINES 7, 8, 10-12, 14, 15,  
4 20-28. SEE ALSO EXHIBIT E, PAGE 5, R.T. EXCERPT 27, LINES 26, 27, 28, SEE  
5 ALSO EXHIBIT "E", PAGE 6, R.T. EXCERPT 28, LINES 1-4, 13, 14, SEE EXHIBIT E, PAGE  
6 9, R.T. EXCERPT 31, LINES 10-12, 14-27, 28, SEE EXHIBIT "E", PAGE 10, R.T. EXCERPT 32 LINES 1-5  
7 SEE EXHIBIT "E", PAGE 7, R.T. EXCERPT 29, LINES 14-16, 18.  
8 SEE EXHIBIT "E", PAGE 3, R.T. EXCERPT 25, LINES 14-28, ALSO SEE EXHIBIT "E", PAGE,  
9 4, R.T. EXCERPT 26, LINES 1-28. > THE COURT: (HON JUDGE PRECKEL) - ALL RIGHT.  
10 ANYTHING ELSE? MR. ADAIR: YOUR HONOR, I -- BUT THERE WAS A CAMERA  
11 THAT WAS (SUPPRESSED EVIDENCE BY THE PROSECUTION) BEING USED BY  
12 EITHER THE -- EITHER MR. THOMAS IN THIS CASE OR MS. SANDERS, WHO  
13 IS ONE OF THE (ALLEGED) WITNESSES, -- WE'RE ASKING THAT WE'D  
14 BE GIVEN A CHANCE TO EXAMINE IT. THE COURT: IN HIS PRELIMINARY  
15 HEARING? (TESTIMONY ON THE CAMERA) MR. ADAIR: I BELIEVE THAT'S  
16 CORRECT, YOUR HONOR. THE COURT: WHAT'S YOUR RESPONSE ON THAT?  
17 MS. HANNAH: YOUR HONOR, I'VE HAD AN OPPORTUNITY TO TALK TO MR. THOMAS,  
18 -- HE SAYS THAT HE DID USE A CAMERA -- HE SAID HE JUST USED IT TO  
19 KIND OF SCARE -- THE COURT: I THINK HE TESTIFIED IT WAS DIGITAL.  
20 (DEFENSE WAS DENIED HIS RIGHT TO EXAMINE CAMERA FOR FINGER PRINTS,  
21 OF MR. THOMAS, KIAH MINCEY, AND MS. SANDERS, AS WELL AS DEMONSTRATE  
22 FLASH AS RELATIVE TO "FIRE FLASH". THE TRIAL COURT'S DENIAL  
23 AND PROSECUTIONS SUPPRESSION OF FAVORABLE EVIDENCE VIOLATED PETITIONERS  
24 RIGHT TO MAKE A DEFENSE, AS MR. THOMAS TESTIFIED THAT CONVICTED  
25 FELON KIAH MINCEY CONSPIRATORIOUSLY GAVE HIM THE CAMERA.)  
26 MR. ADAIR: (1538.5 HEARING ON OR ABOUT 3/1 JANOS) CONCERNING THE CAMERA, I  
27 BELIEVE IT IS -- BECAUSE IT'S PHYSICAL EVIDENCE WHICH IS EXCULPATORY  
28 OR MAY BE EXCULPATORY. HE FEELS IT IS EXCULPATORY. THE COURT:



1 DANGEROUS THING THAT CAMERA IS NOT SUBJECT TO ANY SUPPRESSION  
2 MOTION, MR. ADAIR: BY THE WAY, COULD I ADDRESS DISCOVERY  
3 BRIEFLY? THE COURT: NO. WHEN I SAY "NO," MR. ADAIR: ALL RIGHT,  
4 I THINK THE LAST ITEM YOUR HONOR, IS THERE ARE CERTAIN ITEMS  
5 OF EVIDENCE THAT I WOULD LIKE TO LOOK AT PRIOR TO THE HEARING.  
6 VIEW-- THE COURT: YOU'RE GOING TO HAVE TO BE A LITTLE MORE  
7 SPECIFIC THAN THAT. MR. ADAIR: THERE ARE PHOTOGRAPHS THAT  
8 WERE TAKEN OF THE CAR, THE AUTOMOBILE, I DON'T KNOW -- I DON'T  
9 HAVE A LIST OF PHOTOGRAPHS. I DON'T KNOW ANY ONE HAS EVER  
10 PREPARED, OR AT LEAST IT WAS NEVER GIVEN TO ME, SO I CAN'T  
11 SAY WHAT PHOTOGRAPHS EXIST AND DON'T EXIST, BUT I  
12 BELIEVE THAT THEY'RE IN THE REPORTS. IT DOES INDICATE THAT  
13 THERE ARE PHOTOGRAPHS OF MR. BURTON'S CAR, AND PART OF  
14 OUR MOTION COVERS THE SEARCH OF THE CAR, OF COURSE, IF--  
15 I'M NOT SURE WHAT THE PROSECUTION'S POSITION IS AS FAR AS  
16 THE JUSTIFICATION FOR THE SEARCH OF MR. BURTON'S APARTMENT  
17 AND THE CAR, WHETHER THAT'S GOING TO BE RELEVANT.  
18 THE COURT: JUSTIFICATION ASSERTED BY THE PEOPLE IS SET OUT IN  
19 THEIR OPPOSITION AS HERETOFORE FILED THAT YOUR CLIENT, ALLEGEDLY,  
20 UNDERLINE ALLEGEDLY, BECAUSE IT'S NOT YET BEEN ADDRESSED  
21 BY WAY OF EVIDENCE -- THE RESIDENCE -- SEARCH OF HIS APARTMENT.  
22 MR. ADAIR: AFTER HE READ THE MOTION TO SUPPRESS THAT I FILED, MR.  
23 BURTON FELT THAT THE STATEMENT OF FACTS WAS INADEQUATE AND  
24 DID NOT FULLY AND ACCURATELY REFLECT THE -- IS ASKED ME TO  
25 CHANGE THOSE AND REFLECT MORE ACCURATELY, SO. MR. ADAIR:  
26 COULD I HAVE JUST A MOMENT, YOUR HONOR? THE COURT: SURE. MR. ADAIR:  
27 MY CLIENT INFORMS ME HE WANTS AN IN CAMERA HEARING, THE COURT:  
28 WELL, WHAT HE WANTS AND WHAT HE'S GOING TO GET ARE TWO  
29

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1 DIFFERENT THINGS. THERE'S NO REASON TO GO IN CAMERA. WE'RE GOING  
2 TO PROCEED ON THE RECORD, MR. ADAIR: MY CLIENT ALSO INFORMED  
3 ME HE WOULD LIKE A MARS DEN. THE COURT: NO, WE'RE NOT GOING  
4 TO TAKE UP A MARS DEN MOTION BECAUSE, AGAIN, I'M VERY FAMILIAR  
5 WITH THE HISTORY OF THIS CASE AND, FRANKLY, -- YOU'RE NOW THE  
6 THIRD ATTORNEY OF RECORD, AT ANOTHER TIME HE HAS SOUGHT MARSDENS  
7 AGAINST PREVIOUS COUNSEL, AND I GUESS HE'S OF THE MIND  
8 THAT HE DRIVES THIS CASE. WELL, -- AND I KNOW OF NO REASON  
9 THAT WOULD JUSTIFY A MARS DEN HEARING PRESENTLY CONCERNING  
10 YOUR REPRESENTATION OF HIM. MR. ADAIR: CAN I JUST HAVE  
11 A MOMENT, YOUR HONOR? (PAUSE) MR. ADAIR: MR. BURTON IS INDICATING  
12 TO ME THAT THERE ARE SOME ADDITIONAL ITEMS OF EVIDENCE  
13 THAT HE'S DISCOVERED THAT SHOULD BE THE SUBJECT OF THE 15385  
14 SUPPRESSION MOTION THAT WERE NOT LISTED IN THE LIST OF ITEMS  
15 TO BE SUPPRESSED. THE COURT: "SOUNDS TO ME LIKE YOUR PRESENT  
16 MOTION AND THE LIKE MOTION THAT WAS FILED BY THE PRIOR ATTORNEY,  
17 MR. PLUMMER, MR. ADAIR: HE HAS A LIST OF APPROXIMATELY 41 ITEMS  
18 WHICH WERE PART OF THE EVIDENCE LIST BY THE POLICE  
19 DEPARTMENT THAT HE WISHES SUPPRESSED. THE COURT: WE'LL  
20 MAKE A COPY OF THAT LIST, TREAT IT AS AN ATTACHMENT TO  
21 THE PENDING MOTION, AND DEEM THAT EVIDENCE TO FALL  
22 WITHIN THE CONFINES OF THE PRESENT MOTION. DO YOU HAVE ANY  
23 QUARREL WITH THAT, MISS HANNAH? MS. HANNAH: NO, YOUR HONOR. THE  
24 COURT: ALL RIGHT. MAKE THESE COPIES. SEE EXHIBIT E, PAGE  
25 13, RT. EXCERPT 64, LINES 22-28, SEE ALSO EXHIBIT E, PAGE 14, RT. EXCERPT 65,  
26 LINES 1-5. > MR. ADAIR: COULD I HAVE A MOMENT WITH MY CLIENT, YOUR HONOR?  
27 THE COURT: SURE. MR. ADAIR. MR. ADAIR: YES, YOUR HONOR, THANK YOU. BEFORE WE  
28 GO ANY FURTHER, YOUR HONOR, MR. BURTON WOULD LIKE YOU TO READ HIM

1 THE COURT RULES CONCERNING HIS RIGHTS TO A CONTINUANCE, HIS RIGHT  
2 TO AN IN CAMERA HEARING AND HIS RIGHT TO APPEAL.  
3 THE COURT: WELL, I'M NOT GOING TO DO ANY OF THAT AT THE  
4 MOMENT, PLUS IT'S NOT MY FUNCTION TO RECITE LAW AND PROCEDURE  
5 FOR THE BENEFIT OF MR. BURTON. SEE FURTHER EVIDENCE OF COURT'S  
6 BIAS TOWARDS DEFENDANT AFTER <sup>SWORAB</sup> ~~THE~~, CONSIDERING THE FACT THAT THE  
7 TRIAL JUDGE HON. L. HALCAEN WAS AN EYE WITNESS IN HER COURT ROOM  
8 ON OR ABOUT 23 FEB. 04, TO MR. THOMAS'S STALKING OF DEFENDANT AS  
9 SHE SIGNED OFF OF A PREVIOUS JUDGE'S RESTRAINING ORDER PROTECTING  
10 PETITIONER AGAINST MR. THOMAS. SEE NOW EXHIBIT "B", PAGE 58, RT. EXCERPT  
11 RPT 911, LINES 12-23, 25-28. MR. TROCHA: YOUR HONOR, THE ISSUE I  
12 HAVE THOUGH IS THAT THE DEFENSE IS THEN GOING TO TURN AND  
13 ARGUE THESE THREATS HAPPENED BECAUSE THE DEFENDANT TOLD HIS  
14 MOM ABOUT IT. THE COURT: WELL NO, THEY'RE NOT, BECAUSE I'M  
15 GOING TO INSTRUCT THE JURY THAT IT'S NOT BEING ADMITTED FOR  
16 IT'S TRUTH. AND I'LL INSTRUCT THEM ON THAT AT THE TIME THE  
17 TESTIMONY IS PRESENTED AND I'LL INSTRUCT THEM AGAIN AT THE  
18 CONCLUDING INSTRUCTION. AND IF THAT ARGUMENT'S MADE DURING  
19 ARGUMENT, YOU CAN OBJECT AND I'LL SUSTAIN IT. MR. TROCHA:-  
20 I MEAN -- AND IT'S ESSENTIALLY THE DEFENDANT'S TESTIMONY  
21 THROUGH HIS MOTHER, WHICH THERE'S NO WAY I CAN EFFECTIVELY  
22 CROSS-EXAMINE HER ON THAT BECAUSE -- "WELL, THAT'S WHAT ERIC  
23 TOLD ME." SEE EXHIBIT B, PAGE 18, RT. EXCERPT 883, LINES 4-8, 12, 13, 16, 18,  
24 25, 26, 28. THE COURT: ALL RIGHT, LET ME JUST LOOK AT THE DECLARATION  
25 HE FILED IN THE CIVIL HARASSMENT CASE, SO THE NATURE OF HIS  
26 COMPLAINTS INCLUDE THREATS OF PHYSICAL HARM AND DEATH OVER THE  
27 PHONE; WHILE APPROACHING HIS VEHICLE; OKAY. MR. TROCHA, YOUR RESPONSE?  
28 MR. TROCHA: I THINK WE COVERED THIS IN -- IT'S THE DEFENDANT FILING



1 PAPER WORK WITH THE COURT AND-- TO PROVE TO TRUTH THAT HE  
2 WAS THREATENED DESPITE THE-- A DIFFERENT STORY. THE COURT:  
3 ALL RIGHT. I'LL CONSIDER THAT-- I'LL LOOK AT THE CASE  
4 LAW INVOLVING 1250 AND 1251, SEE EXHIBIT "A", PAGE 29, LINES 11,  
5 12, 14, 15, 17-21, 24, 26, 27. THE COURT: (HON. L. HALGREN) CAN YOU BE  
6 MORE SPECIFIC? THE DEFENDANT: YES, -- MR. THOMAS VIA MY CELL  
7 PHONE (ON 19 MARCH 04) BECAUSE MY DAUGHTER WOULD CALL ME.  
8 ON MY CELL PHONE, AND HE CALLED, THREATENING ME. AND I  
9 ASKED (MR. ADAIR)-- RETRIEVE AND REVIVE THOSE MESSAGES, WHICH  
10 WOULD SUPPORT MY CASE. BECAUSE-- THE COURT: LET ME MAKE SURE  
11 I UNDERSTAND. THE-- THERE WERE CALLS MADE TO YOUR CELL  
12 PHONE-- THE DEFENDANT: YES-- THE COURT: AND THEN AT SOME  
13 POINT YOU ASKED THE DEFENSE. THE DEFENDANT: RIGHT, THE  
14 PHONE NUMBER IS AREA CODE 619-253-1895, IT'S A SPRINT PHONE.  
15 SPRINT PCS. SEE EXHIBIT "A", PAGE 21, AT EXCERPT 185, LINES  
16 11-16, 18-24. THE COURT: NUMBER ONE, -- FOLLOW UP ON THE  
17 THREATS ON YOUR CELL PHONE, THE DEFENDANT: YES. GET IT  
18 REVIVED OR SOMETHING. THE COURT: WHAT WAS THE NEXT  
19 CONCERN YOU HAD? THE DEFENDANT: THE NEXT CONCERN THAT  
20 I'VE HAD-- THAT-- THE TIME OF MY ARREST, AND THE POLICE DID NOT  
21 ALLOW ME TO CALL MY ATTORNEY AFTER BEING THERE FOR THREE  
22 HOURS. THE COURT: WHAT I NEED YOU TO FOCUS ON IS MR. ADAIR,  
23 NOT-- THE DEFENDANT: YES, MA'AM, AND THE POINT THAT I WAS MAKING  
24 WAS THAT I DID NOT MEET WITH AN ATTORNEY UNTIL 14 DAY AFTER MY  
25 ARREST. SEE EXHIBIT "A" PAGE 23, AT EXCERPT 187, LINES 13-21. <sup>QUESTIONS</sup> 2-9, 13-  
26 21. THE COURT: ALL RIGHT. SO GOING BACK TO THE ISSUE OF  
27 THE TESTING-- FORENSIC TESTING, YOU HAD MADE THAT REQUEST



1. FROM AN EARLIER ATTORNEY, BUT THEN YOU ALSO ASKED THAT OF  
2. MR. ADAIR? THE DEFENDANT: YES THE COURT: SO HE HASN'T DONE  
3. THE TESTING, AND YOU'RE COMPLAINING ABOUT THAT? THE DEFENDANT:  
4. YES. THE COURT: I UNDERSTAND YOUR ARGUMENT, I UNDERSTAND  
5. WHAT YOU'RE TRYING TO SAY ON THAT. YOU THINK THERE SHOULD  
6. HAVE BEEN TESTING, AND THERE WASN'T? THE DEFENDANT: YES.  
7. THE COURT: WHAT OTHER ISSUES RELATING TO THE DEFENSE  
8. HAVE NOT BEEN DONE THAT YOU THINK SHOULD HAVE? THE DEFENDANT:  
9. THERE ARE OTHER WITNESSES THAT COULD HAVE BEEN INTERVIEWED.  
10. -- OTHER WITNESSES THAT I WOULD LIKE TO SUBPOENA.  
11. SEE EXHIBIT A, PAGE 24, RTECERPT 188, LINES 9-11, 17-19, 21-24,  
12. THE COURT: OKAY. ANY OTHER COMPLAINTS ABOUT THE DEFENSE OF  
13. YOUR CASE? THE DEFENDANT: -- BE IN JAIL HERE FOR ONE YEAR --  
14. WITHOUT PROBABLE CAUSE. THE COURT: -- THE SUPPRESSION MOTION,  
15. WHAT -- THE DEFENDANT: DUE TO THE FACT THAT MY DAUGHTER  
16. DREONA BURTON WAS ALSO A PROTECTED PERSON ON THE RESTRAINING  
17. ORDER. -- PRELIMINARY HEARING -- HE (MEANING MR. THOMAS) CALLED HER --  
18. SEE ~~18~~ <sup>ENCLAVE</sup> EXHIBIT A, PAGE 25, RTECERPT 189, LINES 1-8, 11-19, 21-28.  
19. THE DEFENDANT: (MEANING MR. THOMAS AT PRELIM.) DISSUADING OF A WITNESS.  
20. MY DAUGHTER, BECAUSE SHE WAS ALSO A EQUAL PROTECTANT  
21. ON THAT ORDER, WHICH WAS VIOLATED. THE COURT: ALL RIGHT.  
22. ANY OTHER MOTIONS YOU THOUGHT SHOULD BE FILED? THE DEFENDANT: YES ALSO,  
23. THERE ARE FALSE STATEMENTS THAT HAVE BEEN ENTERED INTO THE RECORD  
24. AS FAR AS WE ALLEGEDLY -- AS FAR AS THE MOTION THAT WAS WRITTEN  
25. TO 1538.5. THE COURT: ALL RIGHT. IS THIS THE SAME ISSUE YOU <sup>HAD</sup> RAISED  
26. TO JUDGE PRECKEL, WHERE THERE WAS CONCERN RAISED BY YOU THAT THE  
27. STATEMENT OF FACTS DIDN'T FULLY SET FORTH THINGS APPROPRIATELY?  
28. THE DEFENDANT: WELL, WITH JUDGE PRECKEL --

1 THE COURT: I JUST WANT TO KNOW IF THAT'S THE SAME ISSUE YOU'RE  
2 TALKING ABOUT? THE DEFENDANT: -- BUT I WAS DENIED MY MARSDEN  
3 (MOTION) BY JUDGE PRECKEL. HE NEVER GAVE ME AN OPPORTUNITY TO--  
4 THE COURT: WHAT OTHER ISSUES ARE THERE BEYOND WHAT YOU'VE  
5 TOLD ME HAVE NOT BEEN ADEQUATE BY THE DEFENSE?  
6 THE DEFENDANT: THE FACTS OF THE CASE HAVE BEEN MISSTATED,  
7 -- I ASKED HIM TO FILE A MOTION WITH THE JUDGE-- YOURSELF--  
8 ORDER PROSECUTION TO TURN OVER ALL DISCOVERY BECAUSE  
9 MOTIONS THAT WERE FILED BY MR. PLUMMER JULY-- SEE EXHIBIT "A"  
10 PAGE 26, RTEXCERPT 190, LINE 4, THE DEFENDANT: TO COMPEL  
11 PROSECUTION TO TURN OVER ALL DISCOVERY (MARSDEN HEARING 3-1605)  
12 SEE EXHIBIT "A" PAGE 33, RTEXCERPT 197, LINES 1, 4, 10-20. THE COURT:  
13 HE INDICATES THAT-- INSUFFICIENT. MR. ADAIR: WELL THE THREATS  
14 ON THE CELL PHONE-- I HAVE NOT CHECKED ON THAT, BUT MY  
15 UNDERSTANDING WOULD BE ANY CONVERSATIONS WITH REGARD TO THREATS  
16 WOULD HAVE BEEN RECORDED ON SOME SORT OF VOICE MAIL THAT  
17 WOULD HAVE-- THE COURT: HE'S RAISED THE ISSUE OF FORENSIC  
18 TESTING. MR. ADAIR: AGAIN I CAME ON THE CASE SIX-- APPROXIMATELY  
19 SIX MONTHS, SEVEN, EIGHT MONTHS-- EIGHT MONTHS LATER, AND AT LEAST  
20 IN MY MIND,-- IT WOULD APPEAR THAT ANY ATTEMPT TO DO LUMINAL TESTING  
21 OR WHATEVER WILL NOT BE PRODUCTIVE. SEE EXHIBIT "A", PAGE 34, RT  
22 EXCERPT 198, LINES 10-17. THE COURT: WERE THOSE DONE BY YOU OR BY  
23 MR. PLUMMER? MR. ADAIR: I THINK BOTH, I THINK MR. PLUMMER FILED  
24 A NUMBER OF MOTIONS, INCLUDING A DISCOVERY MOTION, AND THAT THEY  
25 WERE BASICALLY TAKEN OFF CALENDAR, THE COURT: -- PROTECTIVE  
26 ORDER AND-- DO YOU HAVE ANY UNDERSTANDING? MR. ADAIR: AS FAR AS--  
27 EXCUSE ME, THE COURT: ALL RIGHT. SEE EXHIBIT "A", PAGE 36, RTEXCERPT,  
28 200, LINES 11-13, 14, 17-22. THE COURT: ALL RIGHT. -- MOTION TO

1. COMPEL DISCOVERY. IS THERE STILL ANY LURKING DISCOVERY ISSUES?
2. MR. ADAIR: FIRST OFF. -- AND IT CAN'T BE RESOLVED. -- FIRST OFF, I'VE
3. SENT A LETTER, TO HER REQUESTING CERTAIN ITEMS, MR. PLUMMER
4. DID THE SAME. MR. PLUMMER FILED A MOTION THAT WAS SERVED ON HER. --
5. DISCOVERY ISSUES WITH THE PROSECUTOR. SEE EXHIBIT A, PAGE 85,
6. RT EXCERPT 1242, LINES 8-10, 12-16. MR. ADAIR: FINE, THANK YOU, YOUR HONOR.
7. YOUR HONOR, THE FIRST ISSUE, I BELIEVE, AS RAISED IN OUR PAPERS ARE
8. MR. BURTON'S FARETTA (PROSE) MOTION, -- HE HAD MAILED IT TO THE COURT
9. AND IT HAD BEEN FILED APPARENTLY ON OR ABOUT JULY 7TH OF THIS YEAR
10. BEFORE TRIAL STARTED AND IT'S OUR CONTENTION THAT THAT NEEDED
11. TO BE RULED ON. SEE NOW EXHIBIT A' PAGE 87, RT EXCERPT 1243, LINES 11,
12. 16, 18-25. MR. ADAIR: THE SITUATION REALLY WOULD GIVE RISE TO A --
13. ACQUITTAL -- FOR ALL OF THOSE REASONS AND PARTICULARLY THE
14. REASONS THAT IT IS IN THE INTEREST OF JUSTICE, THIS IS THE KIND OF
15. THING THAT COULD AFFECT A JURY, MOST PROBABLY WOULD AFFECT A
16. JURY, WE'RE ASKING FOR A NEW TRIAL. THE COURT: OKAY THANK YOU.
17. MR. TROCHA, WOULD YOU CARE TO RESPONSE? MR. TROCHA: YES YOUR HONOR.
18. SEE EXHIBIT A' PAGE 88, RT EXCERPT 1245, LINES 24, ALSO SEE EXHIBIT A'
19. PAGE 89, RT EXCERPT 1246, LINES 1-28. MR. TROCHA: MR. BURTON HAS A
20. DOCUMENT, WHICH -- IT'S A COPY, I GUESS, OF THE DOCUMENT, WHICH
21. HE HAD FILED APPARENTLY BACK IN JULY, I BELIEVE IT APPEARS
22. TO BE MAILED TO THE COURT AND PART OF MANY ISSUES THAT HE
23. RAISES IN THE DOCUMENT APPEARS TO BE A FARETTA MOTION. MR. TROCHA:
24. THERE DOES APPEAR TO BE A FILE STAMP ON THE ENVELOPE. THE COURT:
25. WHATEVER HAS BEEN FILED WITH THE COURT WOULD BE IN THE COURT
26. FILE. MR. ADAIR: COULD I HAVE THIS FILED AS AN EXHIBIT, YOUR HONOR?
27. THE COURT: THE PURPOSE OF IT BEING? IS IT MR. BURTON'S REPRESENTATION
28. THAT THIS IS THE DOCUMENT HE FILED WITH THE COURT? MR. ADAIR: YES



1 YOUR HONOR, THE COURT, WELL, WHY DON'T YOU LET ME LOOK AT IT.  
2 IT MAY BE THAT WE HAVE IT IN THE COURT FILE, IN WHICH CASE WE  
3 DON'T NEED TO DO THAT. (COUNSEL HANDS DOCUMENT TO THE COURT.) THE COURT,  
4 ALL RIGHT, THAT DOCUMENT IS IN THE COURT FILE AND THERE IS AN ENVELOPE  
5 PRECEDING THE DOCUMENT WHERE THE ENVELOPE IS FILE-STAMPED JULY 7TH.  
6 SO WE DON'T NEED TO HAVE ANOTHER COPY, AND THAT, JUST FOR THE  
7 RECORD, IS A DOCUMENT WHICH IS IN HANDWRITING IN PENCIL STATING  
8 AT THE ~ NOTICE OF MOTION, AND MOTION TO DISMISS BECAUSE DENIAL  
9 OF RIGHT TO DUE PROCESS, SIXTH (FOURTH), AND FIFTH AMENDMENT  
10 VIOLATIONS" AND THEN IT GOES ON WHERE ANOTHER THREE OR FOUR  
11 INCHES OF ~ RAISING OTHER ISSUES. AND IN THE MIDDLE OF THAT ON  
12 THE FRONT PAGE THERE IS A REFERENCE TO THE WORD "FARETTA" (PRO SE).  
13 SO I THINK THAT MAKES THE RECORD AS TO WHAT WAS FILED.  
14 SEE EXHIBIT "B" PAGE 110, R.T. EXCERPT 313, LINES 1-25. THE COURT, ALL RIGHT,  
15 GREAT. IN THE MEANTIME, WE'LL ADDRESS OTHER ISSUES. THE NEXT POINT IS,  
16 YOU (MEANING MR. ADAIR) RAISED THE FACT THAT MR. BURTON HAD FILED SOME  
17 DOCUMENTS WITH THE COURT, THEY WERE WITH MY AUTHORIZATION, RETURNED  
18 BECAUSE HE IS REPRESENTED BY COUNSEL. AND SO, MR. BURTON, YOU NEED TO UNDER-  
19 STAND THAT THE WAY MOTIONS ARE BROUGHT TO THE COURT IS IF YOUR  
20 ATTORNEY FEELS THERE IS A LEGAL BASIS FOR BRINGING A MOTION, HE WILL  
21 PRESENT THAT. WE DON'T OPERATE WITH ESSENTIALLY DOUBLE TEAMING. WE DON'T  
22 HAVE BOTH THE DEFENDANT AND THE ATTORNEY SEPARATELY BRINGING MOTIONS  
23 BUT INSTEAD THROUGH YOUR COUNSEL MOTIONS ARE BROUGHT, SO THE MOTIONS  
24 THAT MR. ADAIR, THROUGH HIS LEGAL EXPERIENCE AND TRAINING, HE DEEMS  
25 APPROPRIATE TO RAISE, I WILL CONSIDER. BUT I WILL NOT CONSIDER SEPARATE  
26 MOTIONS FILED BY YOU. JUST SO YOU UNDERSTAND OUR PROCEDURE, WITH REGARD TO  
27 THE ARRAIGNMENT, I BELIEVE THE SECOND AMENDED INFORMATION, WHICH WAS  
28 FILED ON JUNE 16TH AT THE LAST HEARING, MR. ADAIR WAS PRESENT AT



1 BOTH, AND HAD NOTICE OF THAT, BUT MR. BURTON WAS NOT. SO I  
2 BELIEVE HE NEEDS TO BE ARRAIGNED ON THE SECOND AMENDED  
3 INFORMATION. SO WHY DON'T WE PROCEED WITH THAT AT THIS TIME,  
4 (ON OR ABOUT 19 JULY 05 FIRST DAY OF TRIAL) SEE EXHIBIT A, PAGE 111,  
5 RTEX CERPT 14, LINES 14-26 - (11-05-04 HON. JUDGE PRECKLE PRESIDING) THE COURT:  
6 MR. BURTON, IS THERE ANYTHING FURTHER YOU WISH TO SAY? THE DEFENDANT: YES,  
7 SIR, YOUR HONOR, - THAT THERE ALSO WAS INFRINGEMENT UPON MY 14TH  
8 AMENDMENT RIGHTS TO DUE PROCESS. AND ALSO MY DAUGHTER WHO -  
9 ORDERS, AND SHE DID NOT RECIEVE EQUAL PROTECTION UNDER THE LAW. AND I  
10 FEEL I DIDN'T EITHER BECAUSE WHEN IT CAME UP CONCERNING THE RESTRA-  
11 INING ORDER - ONCE RESTRAINING ORDERS - FROM THE INFORMATION I  
12 GATHERED, WHETHER THEY HAVE BEEN SERVED OR NOT, THEY'RE SUPPOSED  
13 TO BE MAINTAINED BY LAW ENFORCEMENT OFFICERS. SEE EXHIBIT "A" PAGE 112,  
14 RTEX CERPT 815, LINES 21-28, SEE ALSO EXHIBIT "A" PAGE 113, RTEX CERPT 816, LINES 128,  
15 SEE EXHIBIT A, PAGE 114, RTEX CERPT 817, LINES 1, 2-18, 21, 25-28. SEE EXHIBIT "A",  
16 PAGE 115, RTEX CERPT 818, LINES 10-16, 20-26. SEE EXHIBIT "A", PAGE 119  
17 RTEX CERPT 824, LINES 1-6, 10, 11, 18. THE COURT: WHAT ARE THE REASONS?  
18 THE DEFENDANT: FOR ONE THING, YOUR HONOR, I HAVE JUDICIAL PREJUDICE.  
19 I HAVE JUDICIAL CONFLICT OF INTEREST AS YOUR HONOR WAS THE  
20 ONE WHO WAS MY BEST WITNESS IN THIS MATTER, AND I FEEL I'VE  
21 BEEN DENIED OF MY RIGHT TO A FAIR AND IMPAIRTIAL TRIAL. BECAUSE  
22 YOU WERE THE ONE WHO SIGNED OFF ON THE TAO -- WHO MADE ME  
23 AWARE THAT THOMAS HAD STRUCK ANGELA SANDERS IN THE HEAD  
24 WITH THE GLASS. AND YOU ARE THE ONE THAT KNOWS ANGELA  
25 SANDERS PERJURED (SIC) HERSELF, BECAUSE IN YOUR COURT AT  
26 THE EX PARTE HEARING (FAMILY COURT) WHERE YOU RESIDED AT.  
27 I HAD MY PAPER WORK FILED OUT (PROPER) AS A PETITIONER, BUT  
28 YOU HAD MADE US SWITCH SEATS. YOU SAID THAT THE ACTION

1. BEGAN IN THE FAMILY COURT, INITIATED THROUGH CHILD SUPPORT  
2. DIVISION BY MS. SANDERS, AND YOU MADE ME THE RESPONDENT,  
3. AND, THEREFORE, YOU HAD KNOWLEDGE OF EVERYTHING, MY  
4. FEARS OF THOMAS WAS PRESENT. IF I CAN REFER YOU  
5. TO YOUR OWN TRANSCRIPT, YOU'LL SEE THAT HE WAS  
6. STALKING ME THEN. THE COURT: AGAIN, LET ME STOP  
7. YOU RIGHT THERE. SO IN WHAT WAY IS THAT A REASON FOR  
8. DISCHARGING MR. ADAIR? THE DEFENDANT: I WANT A MOTION  
9. FOR A MISTRIAL. I HAVE A CONFLICT OF INTEREST WITH  
10. COUNSEL BECAUSE I MADE HIM AWARE OF THIS. AND I  
11. WANTED, -- TO HAVE HIM SWORN, HE'S AWARE OF THIS CONFLICT.  
12. THE COURT: OKAY, ARE THERE ANY OTHER GROUNDS? THE DEFENDANT:  
13. YES THE COURT: WHAT OTHER GROUNDS? THE DEFENDANT:  
14. WHEN I MADE MY MOTION TO GO PRO PER, I FELT YOU WERE  
15. PREJUDICE IN DENYING THAT AND ALL MY OTHER MOTIONS  
16. BECAUSE -- THAT DENIED ME -- IT DEPRIVED ME OF MY  
17. 14TH AMENDMENT RIGHT FOR DUE PROCESS. AND I'D LIKE  
18. A DISMISSAL BASED ON A VIOLATION OF MY 6TH AMENDMENT  
19. AND MY 14TH AMENDMENT RIGHT, BECAUSE YOU DENIED ME MY RIGHT  
20. TO GO PRO PER AND YOU KNEW THAT I WAS COMPETENT.  
21. THE COURT: AND WHAT IS THE -- HOW DOES THAT RELATE TO YOUR  
22. THE DEFENDANT: COUNSEL WAS AWARE OF THIS AND HE DID NOT  
23. INFORM THE COURT. THIS IS NEGLIGENCE IN MY PROSECUTION  
24. (SIC). HE DID NOT INFORM THE COURT OF THIS MATTER, AND THAT  
25. IS THE INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF  
26. MY 6TH AND 14TH AMENDMENT RIGHTS TO DUE PROCESS. I'D LIKE  
27. A DISMISSAL ON THAT. COUNSEL IS AWARE THAT PROSECUTION  
28. HAS NOT PROVIDED ME WITH ALL DISCOVERY, PROSECUTION NOTES

1 WAS MR PLUMMER HAD MOTIONED MS. MARIA HANNA WITH MOTIONS  
2 ON -- BRADY FOR ALL DISCOVERY, PROSECUTION DID NOT RESPOND --  
3 THEREFORE, DENIED ME MY DUE PROCESS, BECAUSE I HAD THE  
4 RIGHT TO BE ABLE TO KNOW THE EVIDENCE AGAINST ME -- I  
5 WOULD OBJECT TO ANYTHING PROSECUTION WOULD SAY AS FAR  
6 AS THEIR -- THE COURT: OKAY. LET ME STOP YOU THERE -- SO  
7 DISCOVERY ISSUE IS ANOTHER REASON? THE DEFENDANT? DISCOVERY  
8 ISSUES AND -- THE COURT: ARE THERE ANY OTHER GROUNDS IN --  
9 THE DEFENDANT? AND THE POLICE ALSO DENIED ME MY DUE PROCESS  
10 AS FAR AS EQUAL PROTECTION UNDER THE LAW, THE COURT:  
11 OKAY. LET ME STOP YOU RIGHT THERE. "I UNDER STAND THAT MOTION".  
12 ARE THERE ANY OTHER GROUNDS ON WHAT YOU'RE SEEKING TO CHALLENGE  
13 MR. ADAIR? THE DEFENDANT? CONFLICT OF INTEREST BECAUSE -- YOU  
14 WERE THE PRESIDING JUDGE AT THE TIME, THOMAS SHOWED UP AND  
15 HE WAS SERVED BY YOUR BAILIFF IN YOUR COURTROOM AT THE  
16 EX PARTE HEARING, I'VE BEEN FALSELY ARRESTED, PROLONGED  
17 DETAINMENT, AND FALSE IMPRISONED, MY WHOLE DUE PROCESS, MY  
18 CIVIL RIGHTS HAVE BEEN VIOLATED. COUNSEL HAS FAILED TO  
19 NOTIFY THE COURTS. SEE EXHIBIT "A" PAGE 118, RT. EXCERPT 823/LINES,  
20 3-16, 20-26, 28, THE COURT: MR. ADAIR, DO YOU HAVE ANY ADDITIONAL  
21 INFORMATION OR BACKGROUND ON THE ISSUE? MR. ADAIR: I BELIEVE YOU DID  
22 SIGN SOME OTHER DOCUMENTS IN THE CASE. THE COURT: -- THE TRO BETWEEN  
23 MR. BURTON AND MR. THOMAS, MR. ADAIR: -- IT LOOKS LIKE YOU SIGNED THE  
24 NOTICE THE COURT: OSC HEARING? MR. ADAIR: THAT'S CORRECT. THE COURT:  
25 OKAY ALL RIGHT. -- SEE ANY REASON WHY ANY INVOLVEMENT I HAD IN A  
26 FAMILY LAW -- DUE TO THIS COURT'S INVOLVEMENT IN THAT CASE, MR. ADAIR,  
27 THE OTHER THING ABOUT IT IS THAT IT APPEARS THAT ANYTHING  
28 THAT YOU -- IF YOU WERE TO HAVE BEEN A "WITNESS", IT'S RELEVANT



1 ISSUES IN THIS MATTER THAT THE (GENUINE) DOCUMENTS  
2 THEMSELVES COULD BE USED RATHER THAN YOURSELF -- CONFLICT.  
3 THE COURT: ALL RIGHT SEE EXHIBIT "A", PAGE 119, RTEXCERPT 824,  
4 LINES 1-6, 10, 11, 18. > MR. ADAIR: MR. BURTON WOULD LIKE TO ADDRESS THE  
5 COURT AGAIN. THE COURT: ALL RIGHT. MR. BURTON, YOU MAY ADDRESS  
6 ME IN PARTICULAR WITH REGARD TO THE ISSUE THAT MR. ADAIR JUST  
7 ADDRESSED ON THE RESTRAINING ORDER OR THE CUSTODY MATTER.  
8 THE COURT: ALL RIGHT, GO AHEAD. THE DEFENDANT: YES, MA'AM. --  
9 -- YOU MAY REFER YOU TO THE COURT CLERK'S RECORDS. SEE  
10 EXHIBIT "A", PAGE 120, RTEXCERPT 825, LINES 2-8, 15-21. > THE COURT:  
11 ALL RIGHT, WELL, I THINK THAT -- THERE'S NO BASIS TO RELIEVE  
12 HIM BASED ON HIS STRATEGIC DECISION NOT TO CHALLENGE THIS  
13 COURT, IT WOULD HAVE HAD TO BE A CHALLENGE FOR CAUSE BECAUSE  
14 THERE'S ALREADY BEEN A PEREMPTORY EXERCISED AGAINST JUDGE  
15 HANDIAN. (THE JUDGE THAT PRESIDED OVER THE PRELIMINARY HEARING,  
16 THE COMMITTING MAGISTRATE, WITHOUT PROBABLE CAUSE,) AND HIS  
17 STRATEGIC DECISION NOT TO DO -- I FIND THAT MR. ADAIR HAS PROPERLY  
18 REPRESENTED DEFENDANT AND WILL CONTINUE TO DO SO. THE MOTION IS  
19 DENIED. THE RECORDING OF THIS PROCEEDING INCLUDING THE  
20 TRANSCRIPT WILL BE SEALED ABSENT FURTHER COURT ORDER. WE  
21 NEED TO PROCEED NOW WITH OUR JURY TRIAL. BRING THE PROSECUTION  
22 IN AND THE COURTROOM WILL BE OPEN. SEE EXHIBIT A, PAGE 97, RT  
23 EXCERPT 17, LINES 1-7, 17-19. (HON. JUDGE FRECKEL 11-05-04) THE COURT: MR.  
24 BURTON, IF I GRANT YOUR REQUEST -- AND LET ME SAY PARENTHETICALLY YOU'RE IN  
25 MY VIEW, VERY WELL-SPOKEN. YOU'VE OBVIOUSLY DONE SOME READING -- AND  
26 YOU'VE BEEN THROWING AROUND THE MAJORITY OF THE AMENDMENTS IN  
27 THE BILL OF RIGHTS AND A FEW OTHERS TO BOOT. IT'S THE ATTORNEY'S JOB TO  
28 REPRESENT YOU AND TO ADVOCATE YOUR POSITION AND PROTECT YOUR RIGHTS AND INTERESTS.



MR. E.W. BURTON #F02720 IN PROPER  
P.O. BOX 5246 CSATF/SP-C (-132L  
COR CORAN CA. 93212

1 STATEMENT OF FACTS - SEE EXHIBIT "A", PAGE 82, RTEXCERPT 753, LINES  
2 1-16 - 7 EL CAJON, CALIFORNIA; FRIDAY, 7/22/05; 1:34 P.M.

3 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT  
4 OUT OF THE PRESENCE OF THE JURY.) THE COURT: LET'S GO  
5 ON THE RECORD BEFORE WE BRING IN THE JURY. I HAVE  
6 ANOTHER DOCUMENT THAT MR. BURTON HAD SENT TO THE COURT.  
7 IT WAS ROUTED THROUGH DEPARTMENT 7, I BELIEVE, BUT IT  
8 APPEARS TO BE ANOTHER "PRE TRIAL OR TRIAL MOTION"  
9 THAT HE HAD WANTED THE COURT TO CONSIDER. I'LL  
10 GIVE THAT TO MR. ADAIR. IF HE THINKS IT HASN'T BEEN  
11 ADDRESSED AND HE WISHES TO ADDRESS THAT, HE CAN DO  
12 SO AT THE RIGHT TIME. MR. ADAIR: THANK YOU, YOUR HONOR.  
13 THE COURT: I THINK AT THIS TIME WE'RE READY TO BRING THE  
14 JURY IN.

15 STATEMENT OF FACTS - PROSECUTION FAILED TO DISCLOSE  
16 AN ADVERSE WITNESS M.S. HILDENBRAND, AFTER DEFENSE  
17 HAD FILED A MOTION FOR DISCOVERY. PROSECUTION'S PRESENTATION  
18 OF THIS WITNESS WAS UNNECESSARY AND UNDULY PREJUDICIAL AS  
19 HER TESTIMONY WAS BASED ON HEARSAY AS THE ALLEGED  
20 911 TAPES HAD ALREADY BEEN DESTROYED BY THE POLICE AGAIN  
21 AFTER A DEFENSE MOTION HAD BEEN FILED. AS PROSECUTOR MR.  
22 TROCHA STATED "HE DID NOT KNOW THE HISTORY OF THE DEFENSE  
23 REQUESTED SUPPRESSED PHOTO GRAPHS OR ANYTHING."

24 SEE EXHIBIT 'D' PAGE 25, RTEXCERPT 332, LINES 3-5, 8-11, 14-16

25 SEE ALSO EXHIBIT 'D' PAGE 26, RTEXCERPT 333, LINES 1, 2, 4, 5, 11-17, 19-

26 22, 26 THE COURT: WELL, AT THE TIME OF TRIAL, IT'S A LITTLE  
27 LATE FOR DISCOVERY REQUEST, SO THAT SHOULD HAVE BEEN  
28 MADE BEFORE. - MR. TROCHA, DID YOU HAVE ANYTHING ELSE?

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1 MR. TROCHA: THERE WAS ONE THING, YOUR HONOR, AND THE 911 TAPES  
2 REMINDED ME, WE DO HAVE UNDER SUBPOENA THE DISPATCHER  
3 (ALLEGED) THAT MR. THOMAS WAS SPEAKING TO-- BE SOME HEARSAY  
4 ISSUES. MY REQUEST IS TO HAVE HER TESTIFY INITIALLY THAT  
5 SHE WAS TALKING TO MR. BURTON-- THE COURT: TO CALL IN YOUR  
6 CASE IN CHIEF? MR. TROCHA: IT IS-- WITHOUT GETTING INTO  
7 ANY DETAILS OF THE CALL, THE COURT: ALL RIGHT. MR. ADAIR, YOUR  
8 RESPONSE TO THAT? MR. ADAIR: "OBJECTION", BUT I BELIEVE SEE'S  
9 A WITNESS THAT WAS RELATIVELY LATE DISCOVERED OR WHATEVER.  
10 I DON'T BELIEVE THERE ARE ANY REPORTS CONCERNING HER  
11 STATEMENTS THAT I'VE RECEIVED. THE COURT: WELL, WHY DON'T  
12 YOU CONSULT WITH MR. TROCHA ON THAT. DID YOU KNOW THE NAME OF  
13 THE WITNESS? MR. TROCHA: I DO. IT'S KENDALL HILDENBRAND,  
14 SEE EXHIBIT "D" PAGE 9, RTE EXCERPT 323, LINES 5, 10, 13, 18, 19, 22, 23, 24,  
15 26-28, SEE ALSO EXHIBIT "D", PAGE 10, RTE EXCERPT 324, LINES 1-5. MR. ADAIR:  
16 I GUESS A FURTHER TROMBETTA MOTION (DEFENDANT'S ALLEGED MISSING  
17 PHONE, NEVER IN HIS POSSESSION AT TIME OF ARREST)-- HE WAS DOING  
18 OTHER THINGS; THE COURT: ALL RIGHT, ANY RESPONSE TO THAT?  
19 MR. TROCHA: I MEAN-- CELLPHONE, I DON'T KNOW, BUT I VIEWED THE  
20 EVIDENCE. MR. ADAIR: IS THIS THE CELL PHONE THAT BELONGED TO  
21 MR. BURTON? MR. TROCHA: I DON'T KNOW WHO IT BELONGED TO.  
22 THE COURT: OKAY-- AND I DON'T HAVE SUFFICIENT EVIDENCE AT THIS  
23 POINT-- PARTICULARLY UNDER A TROMBETTA MOTION-- SO THAT MOTION  
24 IS DENIED. (COUNSEL AND THE DEFENDANT CONFER), MR. ADAIR: THERE IS  
25 ONE OTHER WITNESS (AN ALIBI WITNESS COUNSEL FAILED TO  
26 INTERVIEW AND SUBPOENA, PROVING DEFENDANT'S WHEREABOUTS AT  
27 TIME OF ALLEGED CRIME) APPARENTLY, ACCORDING TO MR. BURTON, AND THAT'S  
28 A BARBARA SAVAGLIO. THE COURT: MS SAVAGLIO, ALL RIGHT THANK-

1 - SEE EXHIBIT A, PAGE 20, RTEKCEPT 1235, LINES 5-11, 13,  
2 14-27, SEE ALSO EXHIBIT B, PAGE 21, RTEKCEPT 1236, LINES 2, 3, 5,  
3 6, 7, 9-11, 13-18, 19, 7 THE COURT: (7-29-05) ALL RIGHT, MR. BURTON,  
4 WHAT IS THE BASIS OF THE MARS DEN MOTION? THE DEFENDANT: YES,  
5 IT'S INEFFECTIVE ASSISTANCE OF COUNSEL. IT DEPRIVATED MY  
6 SIXTH AMENDMENT RIGHT TO AN EFFECTIVE DEFENSE BY NOT PROVIDING  
7 THE COURT WITH PERTINENT INFORMATION THAT HE HAD KNOWN  
8 ABOUT THAT HE DID NOT PRESENT TO THE COURT, -- WITNESSES,  
9 ALSO, HE FAILED TO FILE THE APPROPRIATE MOTIONS THAT NEEDED  
10 TO BE FILED -- A MOTION WHEREAS MY DUE PROCESS WAS VIOLATED  
11 BY PROSECUTIONS FAILURE WITHIN A TIMELY MANNER TO PROVIDE  
12 DEFENDANT WITH DISCOVERY. HE FAILED TO FILE THE APPROPRIATE  
13 MOTIONS TO DISMISS DUE TO DUE PROCESS VIOLATION. THIS IS  
14 A LETTER THAT MR. PLUMMER HAD SENT TO MS. HANNAH REQUESTING  
15 DISCOVERY, AND ANOTHER LETTER WHERE DISCOVERY -- THE COURT  
16 WAS INFORMED THAT THE PROSECUTION HAD ALREADY RECEIVED  
17 THE MOTION REQUESTING, UNDER BRADY DISCOVERY. PROSECUTION  
18 DID NOT RESPOND -- AND I WOULD LIKE THE TRIER OF FACT TO  
19 RECONSIDER -- TO RERULE ON MY MOTIONS, THE COURT: WELL,  
20 ACTUALLY, MR. BURTON, LET ME STOP YOU RIGHT THERE, -- MOTION?  
21 THE DEFENDANT: YES, IT DOES, MA'AM. THE COURT: ALL RIGHT, -- AS I  
22 TOLD YOU WHEN YOU RAISED YOUR MARS DEN MOTION, I BELIEVE, ON THE  
23 FIRST DAY OF TRIAL, YOU HAD RAISED ABOUT TEN POINTS, NINE OF THEM  
24 RAISED PRIOR TO THE FIRST DAY OF TRIAL, ONE OF THOSE HAD TO DO  
25 WITH DISCOVERY ISSUES. I FIND THAT AT THIS POINT RAISING NEW  
26 DISCOVERY ISSUES OR ANYTHING RELATING TO MOTIONS THAT YOU  
27 PREVIOUSLY HAVE RAISED REALLY DOESN'T PERTAIN TO A BASIS FOR  
28 RELIEVING YOUR COUNSEL AT THIS STAGE, -- AND IT'S DENIED.



MR. E.W. BURTON #60270  
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COR CORAN CH. 92212

1 SEE EXHIBIT 'A', PAGE 94, RT EXCERPT 457, LINES 1-7, 21. THE COURT,  
2 FIRST OF ALL, I DID RECEIVE ANOTHER DOCUMENT, MR. BURTON, THAT  
3 YOU HAD SENT TO THE COURT. IT JUST MADE IT'S WAY UP TO MY  
4 DEPARTMENT. I THINK IT OVERLAPS WITH ISSUES MR. ADAIR  
5 RAISED ON THE FIRST DAY OF TRIAL. AGAIN, I'M HANDING IT  
6 TO MR. ADAIR, SO IF THERE ARE ANY ADDITIONAL LEGAL  
7 ISSUES THAT HE THINKS ARE APPROPRIATE TO FILE, HE  
8 CAN DO SO. -- MR. TROCHA: THAT'S FINE.

9 SEE EXHIBIT 'A', PAGE 93, RT EXCERPT 0147, IT IS PETITIONERS  
10 POSTMARKED, COURT FILED STAMPED DATED BOTH 7-07-05, AND  
11 7-08-05. IT IS THE ENVELOPE APPARENTLY THAT CONTAINED  
12 PETITIONERS FARETTA PROSE MOTION, AND MOTION TO DISMISS  
13 DUE TO FEDERALLY GUARANTEED DUE PROCESS VIOLATIONS. THE  
14 COURT PREDJUDICIALLY AND ERRONEOUSLY FAILED TO RULE ON  
15 PETITIONERS TIMELY MOTIONS. IT WAS AWARE OF BY EXAMPLE  
16 OF THESE EXCERPTS. THE TRIAL COURT VIOLATED PETITIONER'S  
17 FUNDAMENTALLY GUARANTEED RIGHT TO A FAIR AND IMPARTIAL  
18 TRIAL. THE FAILURE TO RULE ON PETITIONERS MOTIONS AND  
19 FORCING AND UNWANTED COUNSEL GOES AGAINST THE VERY  
20 PRINCIPLES OF THE BILL OF RIGHTS, THE 6TH AND FOURTEENTH  
21 AMENDMENT DUE PROCESS AND EQUAL PROTECTION CLAUSES,  
22 A PRO SE REVERSAL IS WARRANTED, PREJUDICE IS  
23 INHERENT IN THIS CASE, AS THE TRIER OF FACT WAS  
24 IN FACT A DEPORTED MATERIAL WITNESS FAVORABLE TO PROVING  
25 PETITIONER'S INNOCENCE, PETITIONER STIPULATES GENUINE  
26 COURT BUSINESS TESTIMONIAL ~~QUAL~~ RECORDS AS TESTIMONIAL  
27 EVIDENCE. PETITIONER WAS DEPRIVED OF HIS FEDERALLY  
28 GUARANTEED FUNDAMENTAL RIGHT TO A FAIR AND IMPARTIAL TRIAL.



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1 SEE EXHIBIT B, PAGE 23, RT EXCERPT 329, (PROSECUTIONS REBUTTAL  
2 ON RECORD) LINES 1-10, 20-23, 27. MR. ADAIR: WELL, WE'VE  
3 REQUESTED PHOTOGRAPHS -- I THINK IT STARTED WITH -- WITH THE PRIOR  
4 ATTORNEY ON THE CASE APPROXIMATELY A YEAR AGO REQUESTING  
5 PHOTOGRAPHS. AND THEY -- THAT WAS IN THE FORM OF, I THINK  
6 A LETTER AND AN ACTUAL FILED MOTION THAT WAS NEVER HEARD,  
7 A DISCOVERY MOTION. THAT WAS LAST YEAR, I FOLLOWED UP  
8 WITH A LETTER. THE COURT: MR. TROCHA, DO YOU HAVE ANYTHING  
9 TO SAY IN RESPONSE? MR. TROCHA: "I DON'T KNOW THE  
10 HISTORY OF THE PHOTOGRAPHS OR ANYTHING." THE COURT: OKAY.  
11 SEE EXHIBIT B, PAGES 27, 28, 29 PETITIONER'S POST TRIAL  
12 MOTION / ORDER DENYING DISCOVERY PURSUANT TO P.C. § 1054.9, FILED  
13 7-13-07. SEE EXHIBIT B, PAGE 73, RT EXCERPT 1250, LINES 4-16,  
14 18-26, SEE ALSO EXHIBIT B, PAGE 71, RT EXCERPT 1251, LINES 1-3, SEE  
15 ALSO EXHIBIT B, PAGE 74, RT EXCERPT 1252, LINES 16-28) THE COURT:  
16 ALL RIGHT, AND I DON'T THINK -- DID YOU STATE YOUR NAME FOR THE  
17 RECORD, MS. PARK? IT'S TONI PARK. THE COURT: THANK YOU. ANY  
18 FURTHER COMMENTS FROM THE DISTRICT ATTORNEY? MR. TROCHA: NO,  
19 YOUR HONOR. THE COURT: IS THERE ANY VICTIM OR FAMILY MEMBERS  
20 WHO WISHES TO GIVE A STATEMENT? MR. TROCHA: MR. THOMAS  
21 STATED HE WANTED TO BE PRESENT, BUT HE IS NOT PRESENT.  
22 THE COURT: ALL RIGHT. AND MR. ADAIR? MR. ADAIR: YES, YOUR  
23 HONOR -- FOR THE RECORD, I'D LIKE TO OBJECT TO THE  
24 STATUTES THAT APPARENTLY MAKE THE SENTENCE MANDATORY,  
25 AND THAT'S ON PAGE 7 OF THE PROBATION REPORT UNDER  
26 PROBATION ELIGIBILITY, WHERE IT STATES THE DEFENDANT IS  
27 ABSOLUTELY INELIGIBLE FOR A GRANT OF PROBATION PURSUANT  
28 TO PENAL CODE SECTIONS 1203(B)(2), 1203(E)(3), AND 12022.53.

MR. E.W. BURTON #F02720 IN PROPER  
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FOR THE RECORD, I'M OBJECTING BASED UPON THE MANDATORY  
NATURE OF THOSE, AND WOULD ASK YOUR HONOR TO USE YOUR  
DISCRETION IN NOT-- IN CONSIDERING A GRANT OF PROBATION,  
THE OBJECTION IS BASED UPON CONSTITUTIONAL REASONS  
BOTH STATED IN THAT, THE COURT; THE OBJECTION IS NOTED,

MR. ADAIR: THANK YOU, YOUR HONOR.

THE COURT: MR. BURTON, THE COURT FINDS AS FOLLOWS:

FIRST OF ALL, WITH REGARD TO PROBATION ELIGIBILITY, YOUR  
COUNSEL HAS RAISED AN OBJECTION TO THE STATUTORY  
INELEGIBILITY. THE COURT OVERRULES THAT OBJECTION AND  
FINDS THAT THE LAW IS CONSTITUTIONAL. COURT IS BOUND BY  
THE LAW, HOWEVER, EVEN IF THE COURT WERE NOT AND IF  
THE COURT HAD DISCRETION, THE COURT WOULD NOT BE  
GRANTING PROBATION IN THIS CASE DUE TO THE SEVERE  
NATURE OF THE CHARGES, AND I DO NOT FIND THERE ARE  
ANY GROUNDS THAT WOULD CONVINCE THE COURT THAT YOU  
WOULD BE ELIGIBLE OR AN APPROPRIATE CANDIDATE FOR  
PROBATION, SEE EXHIBIT "B", PAGE 64, RE EXCERPT 1255, LINES,  
~~7-28~~ 7-157 THE COURT: YOU ARE TO PAY RESTITUTION  
PURSUANT TO PENAL CODE 1202.4(F) TO SALINATION THOMAS  
AND "KIAH, K-I-A-H, MINCEY," SHOULD ADDITIONAL LOSSES BE  
REPORTED, AND TO PAY \$17,838.57 TO THE (ALLEGED) VICTIM'S  
COMPENSATION PROGRAM, CLAIM NO. 821546, SUBJECT TO  
MODIFICATION BY THE COURT TO BE PAID FORTH WITH OR AS  
PROVIDED IN PENAL CODE 2085.5. THE COURT WILL NOT ORDER  
RESTITUTION AS TO DAEONA BURTON, (EQUAL PROTECTANT ON RESTRAINING  
ORDER) AS THERE WAS AN ACQUITTAL ON COUNT 4.

1 STATEMENT OF FACTS

2 THE ACCUSATIONAL DELAY WAS DONE TO GAIN AN UNFAIR  
3 TACTICAL ADVANTAGE OVER DEFENDANT AS HE WAS DENIED  
4 HIS FEDERALLY GUARANTEED RIGHT TO BE PRESENT IN COURT.  
5 COUNSEL HAD ALLEGEDLY BEEN GIVEN NOTICE OF THE  
6 AMENDED COMPLAINT, BUT DEFENDANT WASN'T UNTIL 19 JULY 05,  
7 THE FIRST DAY OF TRIAL, PETITIONER RAISED THIS ISSUE  
8 ON RECORD. ADDITIONALLY PROSECUTION, AFTER A DEFENSE  
9 MOTION HAD BEEN FILED AND SERVED ON PROSECUTION WITH  
10 NO RESPONSE FAILED TO GIVE DEFENDANT NOTICE OF AN  
11 ALLEGED VICTIM KIM MINCEY, WHO WAS NOT MADE  
12 AVAILABLE AT TRIAL, PETITIONER CONTENDS HE WAS  
13 DEPORTED BY THE POLICE AND PROSECUTION, AND THUS  
14 PETITIONER'S FEDERALLY GUARANTEED 14TH U.S. CONST. AMEND  
15 DUE PROCESS AND EQUAL PROTECTION CLAUSES WERE  
16 VIOLATED. PETITIONER WAS DENIED HIS PRIOR RIGHT TO CROSS  
17 EXAMINATION. THE PROSECUTOR'S AMENDING OF THE CHARGES  
18 INDICTMENT MADE DEFENDANT STATUTORILY UNCONSTITUTIONAL,  
19 INELIGIBLE FOR PROBATION, AS PETITIONER HAD NO PRIOR  
20 CRIMINAL CONVICTIONS AND WAS OTHERWISE ELIGIBLE FOR  
21 ACQUITTAL AND PROBATION. THE UNCHARGED AND UNPROVEN  
22 ALLEGATIONS OF A CRIME AGAINST AN UNDISCLOSED,  
23 ALLEGED VICTIM <sup>KIM MINCEY</sup> WAS INHERENTLY PREDJUDICIAL AND WAS  
24 A QUESTION FOR THE JURY TO DECIDE. THE SENTENCING OF  
25 DEFENDANT OF AN INFAMOUS UNCHARGE, UNPROVEN CRIME VIOLATED  
26 HIS FEDERALLY GUARANTEED RIGHT TO NOTICE, DUE PROCESS, AND  
27 WAS UNCONSTITUTIONAL, THE TRIAL COURT LACK JURISDICTION TO  
28 CONVICT AND SENTENCE PETITIONER OF AN ALLEGED CUMULATIVE OFFENSE.



MR. E.W. BURTON # F02720 IN PRO PER  
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1 STATEMENT OF FACTS

2 SEE EXHIBIT G, PAGE 2. RT EXCERPT 945, LINES, 9, 10,  
3 14, 15, 16, 19 - 24, 26, 27.

4 THE COURT?: HE'S NOT BEING CHARGED WITH ILLEGALLY  
5 CARRYING A (ALLEGED) FIREARM.

6 MR. ADAIR: BUT I THINK THE JURY SHOULD BE INFORMED  
7 THAT IF SOMEBODY FEELS THAT THEY ARE IN GRAVE  
8 DANGER, THE

9 THE COURT: ALL RIGHT. WHAT'S YOUR RESPONSE TO THAT?  
10 MR. TROCHA: I DON'T THINK THE JURY NEEDS TO KNOW  
11 THAT IT'S IRRELEVANT. - "A PERSON REASONABLY BELIEVED  
12 HE WAS IN GRAVE DANGER,"

13 THE COURT: WELL, HE HASN'T BEEN CHARGED WITH  
14 ANY ILLEGAL FIREARM POSSESSION CRIMES, AND I DON'T  
15 RELEVANT FACTUAL BACK GROUND

16 AS THE EXCERPTS SHOW, CLEARLY PETITIONER'S  
17 DUE PROCESS WAS VIOLATED BY THE STATE TRIAL  
18 COURT. PROSECUTIONS DENIAL TO PETITIONER'S  
19 FEDERALLY GUARANTEED RIGHT TO THE DISCLOSURE  
20 AS MANDATED BY THE UNITED STATES CONSTITUTION'S  
21 DUE PROCESS AND EQUAL PROTECTION CLAUSES OF  
22 THE 14TH U.S. CONST AMENDMENT DEPRIVED PETITIONER HIS  
23 FEDERALLY GUARANTEED FUNDAMENTAL RIGHT TO  
24 A FAIR AND IMPARTIAL TRIAL. DEFENDANT HAD NO  
25 PRIOR CONVICTIONS. THIS WAS AN ALLEGED CRIME  
26 OF WHODUNIT AS ALLEGED IN THE EXCERPTS BY D.A.  
27 MS. HANNAH, FURTHER MORE A CLOSE CASE AS DEFENDANT  
28 WAS ACQUITTED OF COUNT 4. THE LOSS & DESTRUCTION OF EVIDENCE  
29 FAVORABLE TO DEFENSE, SUPPRESSION OF DEFENSE EXHIBIT 7, 911 CALL, BY PROSECUTION  
DENIED PETITIONER HIS RIGHT TO MAKE A DEFENSE VIOLATED DUE PROCESS.



STATEMENT OF FACTS

SEE EXHIBIT G, PAGE 2, RT EXCERPT 945, LINES 23, 24, 26,  
27. MR. TROCHA: -- "A PERSON REASONABLY BELIEVED HE  
WAS IN GRAVE DANGER" THE COURT: WELL, HE HASN'T BEEN  
CHARGED WITH ANY ILLEGAL FIRE ARM POSSESSION CRIMES.  
SEE EXHIBIT G, PAGE 12, RT EXCERPT 0138, LINES 1-28